

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95,
and 101 To Establish Uniform License Renewal,
Discontinuance of Operation, and Geographic
Partitioning and Spectrum Disaggregation Rules and
Policies for Certain Wireless Radio Services
WT Docket No. 10-112

SECOND REPORT AND ORDER AND
FURTHER NOTICE OF PROPOSED RULEMAKING

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**I. INTRODUCTION**

1. Today we implement a unified regulatory framework for the Wireless Radio Services (WRS) that enhances competition and facilitates robust use of the nation’s scarce spectrum resources.<sup>1</sup> The harmonized regulatory approach we adopt today replaces the existing patchwork of service-specific rules regarding renewal, comparative renewal, continuity of service, and partitioning and disaggregation performance, with clear, consistent rules of the road for WRS licensees. By ensuring that licensees in WRS bands operate under the same basic set of rules, we will promote investment in wireless networks and further our mandate to make spectrum “available, so far as possible, to all the people of the United States” regardless of where they live.<sup>2</sup>

2. Our construction, renewal, and service continuity rules work in concert to ensure timely construction of networks and intensive, continuous use of the spectrum. Under our new framework, licensees must timely construct their networks consistent with the rules governing their service, and thereafter must meet our renewal standard by continuing to use the spectrum over the entire license term. Further, under our new rules, WRS licensees may temporarily discontinue use of the spectrum during the license term, but face termination of the license if they permanently discontinue such use after meeting the applicable construction requirements.

3. With these reforms, we achieve the major objectives identified by the Commission when it began examining these issues seven years ago—apply rules consistently across services (to the extent appropriate to do so) and to simplify the regulatory process for licensees.<sup>3</sup>

<sup>1</sup> The rules define WRS as “[a]ll radio services authorized in parts 13, 20, 22, 24, 26, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101” of chapter I of Title 47 of the Code of Federal Regulations. 47 CFR § 1.907 (defining “Wireless Radio Services”). Thus, WRS is an umbrella designation covering a wide range of terrestrially-based wireless services.

<sup>2</sup> 47 U.S.C. § 151.

<sup>3</sup> The action we take today does not apply to services that have no construction/performance obligation. *See* Appendix I. Similarly, these policies do not extend to public safety licenses issued based on the applicant demonstrating eligibility under sections 90.20 or 90.529, or public safety licenses issued in conjunction with a waiver pursuant to section 337 of the Communications Act.

4. Finally, while the Commission's tailored, service-specific initial term construction obligations for flexible-use geographic licenses have facilitated the rapid deployment of a wide variety of wireless services over the past decade, there remains a real and growing digital divide between rural and urban areas in the United States. In light of the Commission's duty to facilitate access to scarce spectrum resources and ensure that wireless communication networks are widely deployed,<sup>4</sup> today's Further Notice of Proposed Rulemaking (Further Notice) takes a fresh look at potential construction obligations beyond the initial license term. We seek comment on a range of possible actions that may advance our goal of substantially increasing the number of Americans, especially those living in rural areas, with access to wireless communications services.

## II. SECOND REPORT AND ORDER

### A. Renewal Requirements for Wireless Radio Services

5. Commission licensing records reflect that, over the next 10 years, we can expect more than 50,000 renewal applications to be filed by geographic-area licensees and more than 625,000 by site-based licensees. By this order, we implement standardized renewal requirements and expeditious renewal procedures, while continuing to ensure that licenses are renewed in the public interest as required by the Communications Act of 1934, as amended (Act).<sup>5</sup> We find that adoption of uniform renewal rules will promote the efficient use of spectrum resources, serve the public interest by providing licensees certainty regarding their license renewal requirements, encourage licensees to invest in new facilities and services, and facilitate their business and network planning.

6. The Commission's current renewal requirements vary widely, as discussed in Appendix E. Some service rules include comprehensive filing and processing procedures, while others contain only minimal guidance. For example, some radio services have evaluation criteria for a renewal applicant involved in a comparative renewal proceeding but no procedures for filing competing applications. Some services require a detailed showing that the licensee has provided substantial service during the license term. The renewal rules for some of our newer services generally require the licensee to be providing service or operating on an ongoing basis, after construction, during the license term.<sup>6</sup>

7. In the *WRS Reform NPRM*, the Commission proposed to adopt renewal requirements for numerous Wireless Radio Services based on the Commission's model for the 700 MHz Commercial Services Band licensees.<sup>7</sup> Under this three-part approach:

- (1) renewal applicants would file a detailed renewal showing, demonstrating that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communications) and substantially complying with the Commission's rules (including any applicable performance requirements) and policies and the Act;

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<sup>4</sup> 47 U.S.C. § 309(j)(3)(A).

<sup>5</sup> *Id.* § 151 *et seq.*

<sup>6</sup> We note that section 1.949(a) of the rules specifies two universal procedural requirements for license renewal applications in the Wireless Radio Services. 47 CFR § 1.949(a). First, the rule establishes a 90-day filing period for renewal applications, beginning 90 days prior to expiration of an authorization and ending on its expiration date. Second, the rule requires applicants to use the "same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605." Section 1.949(a) further provides that "[a]dditional renewal requirements applicable to specific services are set forth in the subparts governing those services."

<sup>7</sup> *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services; Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications*, WT Docket No. 10-112, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996, 7002, para. 17 (2010) (*WRS Reform NPRM and Order*).

- (2) competing renewal applications would be prohibited; and
- (3) if a license is not renewed, the associated spectrum would be returned to the Commission for reassignment.<sup>8</sup>

For services licensed by site, the Commission proposed to modify the first part of this approach by requiring affected licensees to certify that they are continuing to operate consistent with their applicable construction notification(s) or authorization(s) (where the filing of construction notifications is not required), rather than making a renewal showing.<sup>9</sup>

### 1. Renewal Standard

8. As proposed in the *WRS Reform NPRM*,<sup>10</sup> the Commission today adopts uniform requirements for the renewal of WRS licenses.<sup>11</sup> In particular, the Commission proposed that geographic licensees “demonstrate that they *have and are continuing to provide service* to the public”<sup>12</sup> and that site-based licensees “certify that they are *continuing to operate* consistent with the applicable filed construction notification(s) (NT) or most recent authorization(s) (when no NT is required under the Commission’s rules).”<sup>13</sup>

9. We adopt a unified renewal standard for most Wireless Radio Services licensees, both geographic and site-based. A clear, consistent standard will promote the efficient use of spectrum resources and will serve the public interest by providing licensees certainty regarding their renewal requirements. To qualify for renewal, each WRS licensee must demonstrate that over the course of its license term, the licensee either: (1) provided and continues to provide service to the public, taking into account the periods of time the applicable service-specific rules give licensees to construct facilities and meet performance benchmarks, or (2) operated and continues to operate over the course of the license term to address the licensee’s private, internal communications needs, again taking into account the periods of time the applicable service-specific rules give licensees to construct facilities and meet performance benchmarks.

10. More specifically, for renewal at the end of an initial license term, the licensee must demonstrate that it timely constructed to any level(s) required by the service-specific rules and, thereafter, consistent with our permanent discontinuance rules, continuously provided service or operated at or above the required level(s) for the remainder of the license term. For subsequent renewals, the licensee must

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<sup>8</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review -- Amendment of Parts 1, 22, 24, 27, and 90 To Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 06-150; CC Docket No. 94-102; WT Docket No. 01-309; WT Docket No. 03-264; WT Docket No. 06-169; PS Docket No. 06-229; WT Docket No. 96-86, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8093-94, paras. 75-77 (2007) (*700 MHz First Report and Order*).

<sup>9</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7002, para. 18.

<sup>10</sup> *Id.* at 6997, para. 1.

<sup>11</sup> Commenters expressed general support for the Commission’s efforts to streamline and harmonize the license renewal process for Wireless Radio Service licensees. *See, e.g.*, AT&T Comments at 2; CTIA 2017 Comments at 2; EWA Comments at 1; LightSquared Comments at 3; Sprint Comments at ii; Verizon 2017 Comments at 1; CCA 2017 Reply Comments at 2; T-Mobile 2017 Reply Comments at 2.

<sup>12</sup> *WRS Reform NPRM*, 25 FCC Rcd at 6998, para. 2 (emphasis added).

<sup>13</sup> *Id.* at 7002, 7009, paras. 18, 33 (emphasis added).

demonstrate that, over the license term at issue, it continuously provided service to the public or operated under the license to meet the licensee's private, internal communications needs, at or above the level required to meet the final construction requirement during the initial term of the license. In all events, the licensee also must certify that its service or operations are continuing. This requirement is reflected in the new Section 1.949 we adopt today, which replaces separate renewal rules for each service in various rule parts, as reflected in Appendix A.<sup>14</sup>

11. The renewal standard we adopt today follows the approach the Commission adopted in many of its proceedings for new wireless services over the past decade. Beginning with the *700 MHz First Report and Order*<sup>15</sup> in 2007, and continuing to the 2016 *600 MHz Report and Order*,<sup>16</sup> the Commission has established that licensees "must demonstrate that they are providing adequate levels of service over the course of their license terms."<sup>17</sup> Most recently, the Commission applied the same principles in the *Spectrum Frontiers Report and Order*, concluding that Upper Microwave Flexible Use Service (UMFUS) licensees would meet the renewal standard in their initial license terms if they met certain performance benchmarks and were "using [their] facilities to provide service."<sup>18</sup> For subsequent license terms, the Commission concluded that it would "award a renewal expectancy for subsequent license terms if the licensee continues to provide at least the initially-required level of service through the end of any subsequent license terms."<sup>19</sup> Today, we apply that policy across the board to most WRS

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<sup>14</sup> See Appendix A, § 1.949.

<sup>15</sup> See *700 MHz First Report and Order*, 22 FCC Rcd at 8093-94, paras. 75-77. See also *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands; Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16202, para. 271 (2012) (*AWS-4 Report and Order*); *Service Rules for Advanced Wireless Services H Block--Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357, Report and Order, 28 FCC Rcd 9483, 9567-68, para. 223 (2013) (*H Block Report and Order*); *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, GN Docket 13-185, Report and Order, 29 FCC Rcd 4610, 4667, para. 158 (2014) (*AWS-3 Report and Order*).

<sup>16</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6885-87, paras. 785-89 (2014) (*600 MHz Report and Order*).

<sup>17</sup> *Id.* at 6886, para. 787.

<sup>18</sup> *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services; Establishing a More Flexible Framework To Facilitate Satellite Operations in the 27.5-28.35 GHz and 37.5-40 GHz Bands; Petition for Rulemaking of the Fixed Wireless Communications Coalition To Create Service Rules for the 42-43.5 GHz Band; Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services; Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum To Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0- 38.0 GHz and 40.0-40.5 GHz for Government Operations*, GN Docket No. 14-177; IB Docket No. 15-256; RM-11664; WT Docket No. 10-112; IB Docket No. 97-95, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8088, para. 206 (*Spectrum Frontiers Report and Order*). See also *id.* at 8088-89, paras. 203-09. The Commission left to the instant proceeding renewal processes for subsequent license terms. *Id.* at 8088, para. 205.

<sup>19</sup> *Spectrum Frontiers Report and Order*, 31 FCC Rcd at 8078, para. 177. The term "renewal expectancy" in the context of Wireless Radio Services derived from our comparative renewal process, where the Commission would award a renewal expectancy to the incumbent licensee in the context of a comparative renewal hearing if certain conditions were present. As discussed below, we are eliminating the comparative renewal process for all WRS licenses. To avoid the potential for confusion, we will no longer refer to a "renewal expectancy" in our WRS rules

(continued....)

licenses, finding that these renewal requirements are in the public interest and their benefits outweigh any likely costs.<sup>20</sup>

12. As we have stated in a number of decisions, a licensee's renewal obligations are distinct from its performance (also known as construction or buildout) requirements.<sup>21</sup> Many of the Commission's specific service rules require performance showings to be made at the midpoint and end of an initial license term regarding population or area covered.<sup>22</sup> For some services, licensees must demonstrate, or may elect to demonstrate, substantial service as their performance requirement during their initial license term.<sup>23</sup> Under our performance requirement rules, a licensee generally provides a snapshot in time (usually a date in close proximity to, but no later than, the construction deadline) of the level of service that it is providing to the public or its level of operation.<sup>24</sup> By contrast, the showing for renewal—also sometimes referred to as a substantial service showing—requires more detailed information regarding a licensee's services or operations and related matters for its entire license period.<sup>25</sup> Thus, under our current rules, those licensees with a substantial service performance requirement at the

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and policies. Instead, we adopt a “renewal standard” that must be met by a license's expiration date either via satisfaction of a safe harbor or by making a renewal showing.

<sup>20</sup> See *AWS-4 Report and Order*, 27 FCC Rcd at 16202-03, para. 269; *H Block Report and Order*, 28 FCC Rcd at 9567-68, para. 223; *AWS-3 Report and Order*, 29 FCC Rcd at 4667-68, para. 159; *600 MHz Report and Order*, 29 FCC Rcd at 6886, para. 787.

<sup>21</sup> See *WRS Reform NPRM and Order*, 25 FCC Rcd at 6997-98, 7004-11, paras. 2, 21-35; *600 MHz Report and Order*, 29 FCC Rcd at 6886-87, para. 788; *AWS-3 Report and Order*, 29 FCC Rcd at 4668-69, para. 160; *AWS-4 Report and Order*, 27 FCC Rcd at 16202, para. 270; *700 MHz First Report and Order*, 22 FCC Rcd at 8093, para. 75.

<sup>22</sup> See, e.g., 47 CFR §§ 22.503(k)(1)-(2) (paging MEA and EA licenses), 24.103(a)-(c) (narrowband PCS licenses), 24.203(a)-(b) (broadband PCS licenses), 27.14(g)-(h) (WCS 700 MHz licenses), 90.155(d) (multilateration LMS EA licenses), 90.665(c) (SMR MTA licenses), 90.685(b) (SMR EA licenses), 90.767 (220-222 MHz EA and Regional licenses), 90.769 (220-222 MHz Phase II nationwide licenses), 101.1325 (MAS EA licensees), 101.1413 (MVDDS licenses).

<sup>23</sup> See, e.g., 47 CFR §§ 22.503(k)(3) (paging MEA and EA licenses), 22.873 (commercial aviation air-ground licenses), 24.103(a)-(d) (narrowband PCS licenses), 24.203(d) (broadband PCS licenses), 27.14(a) (AWS and WCS licenses), 80.49(a)(1) (VHF public coast station geographic area licenses), 80.49(a)(3) (AMTS licenses), 90.155(d) (multilateration LMS EA licenses), 90.665(c) (SMR MTA licenses), 90.685(b) (SMR EA licenses), 90.767 (220-222 MHz EA and Regional licenses), 90.769 (220-222 MHz Phase II nationwide licenses), 95.833(a) (218-219 MHz Service licenses), 101.143 (MVDDS licenses), 101.527 (24 GHz Service licenses), 101.1011 (LMDS licenses), 101.1325 (MAS EA licenses).

<sup>24</sup> Some of the Commission's performance rules require a licensee to provide service to a minimum percentage of the population in a licensed market area or to a minimum portion of a geographic area. Other performance rules require a licensee to demonstrate that it is providing substantial service in the licensed area. Still other rules require a licensee to certify that it has constructed and is operating the facilities proposed in the underlying application.

<sup>25</sup> See, e.g., 47 CFR §§ 27.14(b)-(c) (substantial service demonstration required to establish a right to a renewal expectancy must include specific information regarding the level of investment and service during a licensee's past license term that is not required to demonstrate substantial service to satisfy the performance requirements under section 27.14(a)), 90.743 (to demonstrate the provision of substantial service in support of a renewal application, a 220-222 MHz licensee must include specific information that is not required for a licensee to demonstrate that it has provided substantial service to satisfy the performance requirements under either section 90.767 or 90.769), 101.1413(c) (to claim a renewal expectancy, an MVDDS licensee's renewal application must include specific information at the end of the ten-year license term that is not required to be submitted to demonstrate substantial service at “the end of five years into the license term” pursuant to section 101.1413(b)), 101.1327 (requiring an MAS EA renewal applicant to provide specific information at the end of the 10-year license term that is not required for licensees that opt to satisfy their mid-term performance requirement via a substantial service showing pursuant to section 101.1325(b)).

end of their initial license term are subject to two distinct substantial service requirements, one to support their renewal application and one for performance purposes.<sup>26</sup> The renewal standard we adopt today and our explanation of its nature should make it more readily apparent to licensees that the showing required for renewal is distinct from the showing required to meet a performance requirement.

13. As the Commission stated in the *WRS Reform NPRM*, the Wireless Radio Services that are licensed by rule or on a “personal” basis or that have no construction/performance obligation are beyond the scope of this proceeding<sup>27</sup> and are not encompassed within the renewal policies we adopt today. Similarly, these policies do not extend to public safety licenses issued based on the applicant demonstrating eligibility under Sections 90.20 or 90.529, or public safety licenses issued in conjunction with a waiver pursuant to Section 337 of the Act.<sup>28</sup> We also exclude the Educational Broadband Service (EBS) from application of the renewal requirements we articulate in this Second Report and Order since this service presents unique issues that are under consideration in a separate, comprehensive EBS rulemaking proceeding.<sup>29</sup>

14. In contrast, we find it is no longer necessary to provide any sort of modified renewal requirements for Broadband Radio Service (BRS) licensees as the Commission had proposed in the *WRS Reform NPRM*.<sup>30</sup> Given that the BRS transition,<sup>31</sup> which began in 2010, is now complete, we conclude that the BRS is appropriately included within our overall renewal framework at this time. We also reject Motorola’s request that the partitioned and/or disaggregated Part 80 VHF Public Coast (VPC) Service spectrum it acquired for the purpose of promoting public safety and private land mobile systems be excluded from application of our generally applicable renewal framework.<sup>32</sup> We are not persuaded that

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<sup>26</sup> Pursuant to section 1.946(c) of the Commission’s rules, if a licensee in the Wireless Radio Services fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires. 47 CFR § 1.946(c); *see also id.* § 1.955(a)(2) (“Authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements.”).

<sup>27</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7002, para. 18. *See also* Appendix I for a list of Wireless Radio Services that are excluded from this proceeding.

<sup>28</sup> 47 CFR §§ 90.20, 90.529; 47 U.S.C. § 337. We decline to extend our new renewal policies to public safety licensees as requested by EWA and LMCC. *See* Letter from Elizabeth R. Sachs, Counsel to Enterprise Wireless Alliance, to Marlene Dortch, Secretary, FCC, at 1-2 (filed July 24, 2017); Letter from Mark E. Crosby, Land Mobile Communications Council, to Marlene Dortch, Secretary, FCC, at 1-2 (filed July 21, 2017) (LMCC July 21, 2017 *Ex Parte*); LMCC Comments at 3. The *WRS Reform NPRM* specifically proposed to exclude public safety licenses from its purview. *See WRS Reform NPRM*, 25 FCC Rcd at 7009-10, para. 34. No public safety entity has commented in the proceeding requesting application of the renewal framework to public safety licensees. In fact, as LMCC acknowledges, The Association of Public-Safety Communications Officials (APCO) no longer supports LMCC’s position or recommendations in its July 21, 2017 *Ex Parte* letter. LMCC July 21, 2017 *Ex Parte* at 2, n.3.

<sup>29</sup> *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules To Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.*, WT Docket Nos. 03-66, et al., Third Order On Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling, 23 FCC Rcd 5992 (2008) (*BRS/EBS Second FNPRM*).

<sup>30</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7008-09, paras. 30-32.

<sup>31</sup> *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules To Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands et al.*, WT Docket No. 03-66 et al., Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (*BRS/EBS Report and Order and FNPRM*).

<sup>32</sup> Motorola Comments at 11-12. Motorola makes the same argument regarding the proposed permanent discontinuance and partitioning and disaggregation rules. Motorola Comments at i.

the characteristics of the Motorola-held VPC Service spectrum and its planned usage warrant different treatment from other WRS licenses regarding the renewal rules, and thus we do not grant the exception from the renewal policies sought by Motorola.

## 2. Implementation of Renewal Standard

15. Many commenters express concern that the renewal framework proposed in the *WRS Reform NPRM* would cause uncertainty in the renewal process and create undue administrative burdens for licensees and Commission staff.<sup>33</sup> Some commenters suggest that we apply a certification process for all renewal applications.<sup>34</sup> CTIA, for example, recommends that the Commission employ the more streamlined certification process proposed for site-based licenses, which “would harmonize the Commission’s renewal requirements by providing a clear, streamlined and efficient process for *all* wireless licensees referenced in the *WRS Reform NPRM*.”<sup>35</sup> Other commenters suggest that the Commission should adopt some form of a safe harbor.<sup>36</sup> MetroPCS, for example, argues that, if the Commission adopts the proposed renewal showing, “it should codify a safe harbor in order to avoid unintended consequence[s] and protect the legitimate expectations of carriers deserving a renewal.”<sup>37</sup>

16. We agree that clearer and more certain renewal processes will benefit both licensees and the Commission. We conclude that adopting a set of safe harbors—based on licensee certifications—will serve the public interest by reducing filing burdens on licensees and concentrating scarce Commission resources on reviewing renewal filings that warrant close scrutiny. Accordingly, we adopt four safe harbors to accommodate four license renewal scenarios by which a renewal applicant can meet the renewal standard adopted in this Second Report and Order. These license renewal safe harbors are for (1) site-based licenses; (2) wireless providers using geographic licenses; (3) private systems using geographic licenses; and (4) partitioned or disaggregated licenses without a performance requirement. In a future proceeding, the Commission may consider additional safe harbors as necessary and warranted.<sup>38</sup> If a licensee is unable to meet the requirements of one of the enumerated safe harbors, the licensee must make a more detailed “renewal showing” as part of its renewal application; the requirements for a renewal showing are described following our discussion of the renewal safe harbors.

17. Each safe harbor scenario is based on three certifications, which are subject to the Form 601 condition that “[w]illful false statements made on this form or any attachments are punishable by fine and/or imprisonment (U.S. Code, Title 18, § 1001) and/or revocation of any station license or construction permit (U.S. Code, Title 47, § 312(a)(1)), and/or forfeiture (U.S. Code, Title 47, § 503).” If the renewal applicant, in good faith, can make all three certifications, its renewal application will be subject to routine processing, and no further detailed renewal showing will be required as part of the renewal application. The first certification in each scenario addresses the renewal applicant’s ongoing provision of service and/or operations, and is tailored to the particular nature of licenses covered under a given safe harbor. The second certification requires the licensee to certify that no permanent

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<sup>33</sup> See, e.g., Verizon Comments at 1; LightSquared Comments at 3; AT&T Comments at 2; T-Mobile Comments at 9; CTIA Comments at 3; Fixed Wireless Reply Comments at 3; Sensus Reply Comments at 3; LightSquared Reply Comments at 4; CTIA Reply Comments at 4.

<sup>34</sup> See, e.g., RCA Reply Comments at 4; Verizon Comments at 1-2; Sprint Comments at 8; EWA Reply Comments at 2; T-Mobile Reply Comments at 4.

<sup>35</sup> CTIA Comments at 17-18.

<sup>36</sup> Sprint Comments at 8 (supporting a safe harbor similar to site-based license renewal certification); WCAI Comments at 3 (noting that Commission has used statistically based safe harbors in connection with substantial service showings); MetroPCS Comments at 26.

<sup>37</sup> MetroPCS Comments at 26.

<sup>38</sup> See, e.g., Sprint Comments at 9 (proposing safe harbor for licensees that provide broadband service to rural or tribal areas).

discontinuance of service or operation (as defined below as an unbroken failure to provide service or operate over a specified period of days) occurred during the license term. The third certification requires the licensee to certify that it has substantially complied with all applicable FCC rules, policies, and the Act.

**a. Site-based Licenses**

18. Consistent with the Commission's certification proposal in the *WRS Reform NPRM* for the renewal of site-based licensees,<sup>39</sup> we adopt a safe harbor for site-based WRS licensees. With site-based services, a licensee's initial application for authorization provides the exact technical parameters of its planned operations (such as transmitter location, particular frequency, and power levels), while the licensee's subsequent notification, that it has completed construction, confirms that the facilities have been constructed consistent with its authorization (or with minor modifications as may be permitted by the applicable service rules).<sup>40</sup> A licensee also may file to modify its license, which may lead to a modified authorization and the submission of a subsequent construction notification.<sup>41</sup> Consequently, at the time a site-based service provider files a renewal application, it should be operating as licensed.<sup>42</sup>

19. A site-based WRS licensee will meet our renewal standard if it can certify that it is continuing to operate consistent with the licensee's most recently filed construction notification (or most recent authorization, when no construction notification is required), and make the certifications regarding permanent discontinuance and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. Consistent with our treatment of wireless providers using geographic licenses as discussed below, licensees who temporarily reduce their operations for fewer than 180 days may avail themselves of the safe harbor.<sup>43</sup> We conclude that this safe harbor for site-based WRS licensees is in the public interest and will expedite the renewal process for licensees, ensure spectrum is being used efficiently to provide service to the public or for private internal needs, and allow Commission staff to concentrate scarce resources on renewal applications that warrant heightened scrutiny. Moreover, applying the safe harbor process to site-based services will ensure that renewed licenses in these services are being operated, and if they are not, the licensee must submit a renewal showing as discussed below. This safe harbor may be used by any site-based WRS license in the services listed in Appendix G.<sup>44</sup>

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<sup>39</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7009-11, paras. 33-35. Industry stakeholders support a streamlined certification renewal process for site-based licensed services. *See, e.g.*, LMCC Comments at 4-5; Blooston Comments at 20; EWA Comments at 3; Sprint Comments at 11-12; USCC Comments at 9.

<sup>40</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7009, para. 33.

<sup>41</sup> *Id.* We note that it is possible that a site-based licensee will have been granted a license modification for which the construction will not need to be completed as of the renewal application filing date. In such a case, the licensee will be able to include the authorized but not yet constructed facilities within the scope of the renewal application. In the event that the license is renewed with the authorized but not yet constructed parameters, and the licensee fails to construct pursuant to the modification authorization, the renewed license will no longer encompass those revised parameters.

<sup>42</sup> *Id.*

<sup>43</sup> *See* Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (filed July 27, 2017) (*Verizon July 27, 2017 Ex Parte*) (requesting clarification that a geographic or site-based licensee may certify that it has met the level of service during the license term requirement even if it has "fallen below the benchmark at some point during the license term" if, for example, it took sites down for routine maintenance or technology upgrades or sites were down due to a temporary service outage).

<sup>44</sup> We codify this list of site-based license services in section 1.907 of our rules. *See* Appendix A § 1.907 (Covered Site-based Licenses). We also note that in the *WRS Reform NPRM*, the Commission proposed to include Digital Electronic Message Service (DEMS) within the renewal rules for site-based licensees. *WRS Reform NPRM*, 25 FCC

**b. Wireless Providers Using Geographic Licenses**

20. We also find that it would be in the public interest to adopt a safe harbor for WRS licensees that provide service to customers using geographic licenses. Many commenters urge the Commission to adopt a streamlined certification process for renewal of geographic licenses similar to what the Commission proposed for site-based licenses.<sup>45</sup> Most recently, Verizon argues that a straightforward renewal certification “will obligate the licensee to verify that it is complying with the terms of its authorization and Commission rules, including buildout, spectrum utilization, or other performance requirements.”<sup>46</sup> Similarly, CTIA maintains that a certification for geographic license renewal “would require that licensees verify that they have complied with all buildout, performance, and other rules—*demonstrating that they are providing service*—without imposing unjustified burdens.”<sup>47</sup> Both Verizon and CTIA argue that a certification is consistent with the renewal standard adopted in the *Spectrum Frontiers Order* for the millimeter wave spectrum bands at 28 GHz, 37 GHz, and 39 GHz.<sup>48</sup> We agree that a certification, as part of a comprehensive safe harbor for geographic licenses, will streamline our renewal processes, ensure compliance with our rules, and provide clarity and certainty for WRS licensees.

21. Accordingly, we adopt a safe harbor for WRS providers using geographic licenses consistent with the approach taken in the *Spectrum Frontiers Order*.<sup>49</sup> A geographically-licensed WRS licensee providing service to customers will meet our renewal standard if it can make the following certifications. For a licensee in its initial license term<sup>50</sup> with an interim performance requirement, the licensee must certify that (1) it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement (up until the deadline for meeting the

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Rcd at 7010, para. 34. DEMS licenses are no longer authorized on a site-by-site basis. See *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz*, Report and Order, WT Docket No. 99-327, 15 FCC Rcd 16934, 16946, para. 24 (2000) (*24 GHz Report and Order*). Accordingly, we address DEMS in the same context as other geographic licenses.

<sup>45</sup> CTIA Comments at 17-18; RCA Reply Comments at 4; Verizon Comments at 1-2; Sprint Comments at 8; EWA Reply Comments at 2; T-Mobile Reply Comments at 4.

<sup>46</sup> Verizon 2017 Comments at 2.

<sup>47</sup> CTIA 2017 Comments at 2-3 (emphasis added).

<sup>48</sup> Verizon 2017 Comments at 3, citing *Spectrum Frontiers Report and Order*, 31 FCC Rcd 8014; CTIA 2017 Comments at 6.

<sup>49</sup> *Spectrum Frontiers Report and Order*, 31 FCC Rcd at 8077-78, paras. 174, 176-77 (awarding a “renewal expectancy for subsequent license terms if the licensee continues to provide at least the initially-required level of service through the end of any subsequent license terms”), 8088-89, para. 206 (for mobile and point-to-multipoint services in the 28 GHz, 37 GHz (geographic area licenses only), and 39 GHz bands, a licensee will meet the license renewal standard if it is providing coverage to 40 percent of the population of the license area and is “using the facilities to provide service”), 8089, para. 208 (for fixed services in the 28 GHz, 37 GHz, and 39 GHz bands, a licensee will meet the renewal standard if it constructs and operates a certain number of links per population benchmark, “these links must be part of a network that is *actually providing service*, whether to unaffiliated customers, or private, internal uses, and all links must be present and operational at the end of the license term”) (emphasis added).

<sup>50</sup> For performance showing requirements at the end of the initial license term, there are two filing processes in ULS depending on the service of the license. For some services, licensees file a notification of construction (NT) and a separate renewal application. For other services, licensees include their performance showing as an exhibit to the renewal application and do not file a separate NT. Under either filing method, the licensee would certify in its renewal application that it has submitted a final performance showing in good faith, but acceptance of its safe harbor renewal certification is contingent on the Commission’s review and acceptance of the performance showing. This is true as well for private systems using geographic licenses.

final performance requirement), the licensee continues to use its facilities<sup>51</sup> to provide at least the level of service or operation required by its interim performance requirement,<sup>52</sup> and (2) it has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term.<sup>53</sup> For a licensee in its initial license term with no interim performance requirement, the licensee must certify that it has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term.<sup>54</sup> For a licensee in any subsequent license term, the licensee must certify that it continues to use its facilities to provide at least the level of service required by its last performance requirement through the end of any subsequent license terms. Some commenters ask us to recognize that there are circumstances (e.g., network upgrades, natural disasters, power outages, routine maintenance, temporary service outages) during which a licensee may need to “reduce overall coverage below the level required by buildout requirements, or briefly turn down service...for a limited period.”<sup>55</sup> CTIA maintains that “these events should not disqualify a licensee from using the safe harbor.”<sup>56</sup> Thus, we clarify that licensees who temporarily drop below their construction benchmark for fewer than 180 days may avail themselves of the safe harbor. In addition, the licensee must make the certifications regarding permanent discontinuance and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. This safe harbor may be used by geographic licensees in the Wireless Radio Services listed in Appendix H.<sup>57</sup>

### c. Private Systems Using Geographic Licenses

22. We find that the public interest will be served by adopting a separate safe harbor for private systems using geographic licenses. In the *WRS Reform NPRM*, the Commission queried what factors should be considered during renewal of licenses used for a licensee’s private, internal communications needs.<sup>58</sup> Commenters generally object to applying the *WRS Reform NPRM*’s proposed renewal framework to geographic licensees that deploy private, internal communications systems.<sup>59</sup>

<sup>51</sup> We determine that use of facilities includes operations under any spectrum leasing arrangement.

<sup>52</sup> We note that any licensee that fails to meet its interim performance requirement will not be able to avail itself of this safe harbor option at the end of the initial license term because it will be unable to certify that it has met its interim performance requirement.

<sup>53</sup> The service continuity certification encompasses a licensee with a final performance requirement deadline coincident with license expiration as it does a licensee with a final performance requirement deadline that occurs years prior to license expiration.

<sup>54</sup> We recognize that a licensee may file a renewal application as early as 90 days prior to license expiration. 47 CFR § 1.949(a). We note that a licensee with a performance requirement deadline coincident with its license expiration date must meet any applicable performance requirement before it can certify compliance with the safe harbor requirements and file a renewal application.

<sup>55</sup> Letter from Brian M. Josef, Assistant Vice President – Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (filed July 27, 2017) (CTIA July 27, 2017 *Ex Parte*). See also Verizon July 27, 2017 *Ex Parte*, at 2.

<sup>56</sup> CTIA July 27, 2017 *Ex Parte* at 2.

<sup>57</sup> We codify this list of geographic license services in section 1.907 of our rules. See Appendix A § 1.907 (Covered Geographic Licenses).

<sup>58</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7008, para. 28.

<sup>59</sup> See, e.g., NYSEG Comments at 5 (arguing that “utility companies are in a unique position, which makes the proposed rules more burdensome than on commercial wireless companies with core business objectives related to wireless communications”); Blooston Comments at 18 (contending that the Commission’s proposed requirements are based on demonstrations of service to the public and, therefore, are inappropriate for private, internal services);

(continued....)

Instead, numerous commenters urge the Commission to adopt a certification for such licensees.<sup>60</sup> We agree that a certification, as part of a comprehensive safe harbor for geographic licensees using their licenses for private, internal purposes, will streamline our renewal processes, ensure compliance with our rules, and provide clarity and certainty for such licensees.

23. Accordingly, we adopt a safe harbor for WRS licensees using their geographic licenses for private, internal systems. A geographically licensed WRS licensee using its license for private, internal purposes will meet our renewal standard if it can make the following certifications. For a licensee in its initial license term with an interim performance requirement, the licensee must certify that (1) it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement (up until the deadline for meeting the final performance requirement), the licensee continues to use its facilities to further the licensee's private, internal business or public interest/public safety needs at or above the level required to meet its interim performance requirement, and (2) it has met its final performance requirement and continues to use its facilities to further the licensee's private business or public interest/public safety needs at or above the level required by its final performance requirement through the end of the license term. For a licensee in its initial license term with no interim performance requirement, the licensee must certify that it has met its final performance requirement and continues to use its facilities to further the licensee's private business or public interest/public safety needs at or above the level required by its final performance requirement through the end of the license term. For a licensee in any subsequent license term, the licensee must certify that it continues to use its facilities to further the licensee's private business or public interest/public safety needs at or above the level required to meet its last performance requirement. Consistent with our treatment of wireless providers using geographic licenses as discussed above, licensees who temporarily drop below their construction benchmark for fewer than 180 days may avail themselves of the safe harbor. In addition, the licensee must make the certifications regarding permanent discontinuance and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. This safe harbor may be used by geographic area licensees in the Wireless Radio Services listed in Appendix H.

#### **d. Partitioned or Disaggregated Licenses**

24. As discussed in more detail below, our rules permit parties to partitioning or disaggregation agreements to choose between two options to determine how the parties will satisfy any relevant pending performance requirement for the license after it has been divided by geographic partitioning<sup>61</sup> or spectrum disaggregation<sup>62</sup> arrangements. In cases where the original licensee has satisfied the applicable performance requirement prior to partitioning or disaggregating the license, however, the recipient of the partitioned area or disaggregated spectrum has no performance requirement associated with the partitioned or disaggregated portion. This lack of a performance requirement is relevant in the renewal context because, while the partitioner or disaggregator may be able to meet a safe harbor (to demonstrate that over the course of its license term, the licensee provided and continues to provide service to the public, or operated and continues to operate the license to meet the licensee's private, internal communications needs), the partitionee or disaggregatee will not be able to avail itself of the safe harbors as adopted above because it cannot certify continuing service or operation consistent with its final performance requirement because it has none. Accordingly, the safe harbor approach must be

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AICC Reply Comments at 1 (concurring with Blooston's conclusion that Part 90 Private Land Mobile Radio licensees should be exempt from the proposed rule changes).

<sup>60</sup> *E.g.*, Southern Comments at 4; Blooston Comments at 19; PacifiCorp Comments at 4.

<sup>61</sup> "Partitioning" is the assignment of geographic portions of a license along geopolitical or other, potentially undefined boundaries.

<sup>62</sup> "Disaggregation" is the assignment of discrete portions of "blocks" of spectrum or specific frequencies licensed to a geographic licensee or qualifying entity.

adjusted to provide the partitionee or disaggregatee with a mechanism for demonstrating compliance with the renewal standard.

25. To this end, we adopt an approach that applies to WRS licensees with partitioned or disaggregated licenses when there is no performance requirement. Such a licensee will meet our renewal standard if it can satisfy the following safe harbor. The licensee must certify that it uses and continues to use its facilities either to provide service to the public or to further the licensee's private, internal business or public interest/public safety needs. Thus, although we do not impose a specific performance requirement for such licensees at renewal of the current license term, in order to avail itself of the streamlined safe harbor renewal process for any subsequent license term, a licensee without a performance requirement must demonstrate some level of service or operation over the subsequent license term.<sup>63</sup> In addition, the licensee must make the certifications regarding permanent discontinuance (as defined below) and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. This safe harbor may be used by any WRS licensee with a partitioned or disaggregated license without an associated performance requirement. Any licensee that cannot meet the requirements of the safe harbor must submit a renewal showing as discussed below.

26. We recognize that this safe harbor, unlike the others, does not prescribe a specific level of service or operation required for renewal. As the Commission has explained, however, "[t]he goal of our construction requirements in both the partitioning and disaggregation contexts is to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place."<sup>64</sup> In the scenario addressed here, the partitioner or disaggregator has already met the associated performance requirement for the license; any additional construction undertaken by the partitionee or disaggregatee exceeds the relevant performance benchmark for the original license and thus does not contravene the goal of the Commission's construction requirement in the partitioning and disaggregation context. However, we contemplate taking action if it appears that parties to a partitioning or disaggregation are attempting to abuse our rules.

### 3. Renewal Showing

27. We seek to provide licensees with certainty and clarity regarding the renewal process, and thus have adopted four safe harbors to provide licensees with a streamlined mechanism for meeting our renewal standard. We expect that most licensees will be able to avail themselves of our streamlined safe harbor process and receive timely renewal grants. In the event a licensee is unable to meet the requirements of any of the enumerated safe harbors, however, it must file a "renewal showing"<sup>65</sup> to demonstrate how it meets the renewal standard we adopt in this Second Report and Order.<sup>66</sup> Examples of

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<sup>63</sup> As discussed more fully below, we will not require partitionees or disaggregatees without a performance requirement to be operating in their current license terms. However, such licensees must demonstrate service or operation over the license term in any subsequent license term in order to meet the safe harbor. See *infra* para. 62. Our decision here, however, is subject to any requirements we may adopt in connection with the Further Notice.

<sup>64</sup> *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; Implementation of Section 257 of the Communications Act – Elimination of Market Entry Barriers*, WT Docket No. 96-148, GN Docket No. 96-113, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21831, 21864, para. 61 (1996).

<sup>65</sup> To avoid the potential for confusion, we will no longer refer to "substantial service renewal showings" in our rules and policies, as this may lead to confusion between renewal and performance requirements. Going forward, we will use the term "renewal showing" to reflect the factors that the Commission will consider in the context of a renewal application. See *WRS Reform NPRM*, 25 FCC Rcd at 7006, para. 24.

<sup>66</sup> Pursuant to section 308(b) of the Communications Act, the Commission may require renewal applicants to "set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station" as well as "such other information as it may require." 47 U.S.C. § 308(b).

licensees that will not be able to meet a safe harbor, but for whom there nonetheless may be legitimate bases that warrant renewal, include a licensee that no longer provides service or no longer operates at the level required to meet its final performance requirement, or a licensee that has modified its service or operations since its final performance requirement to offer novel services or employ a unique system architecture. These scenarios warrant additional scrutiny before the Commission can determine whether license renewal is in the public interest. We reiterate that we will not require renewal applicants to file a renewal showing if they can meet our renewal standard via a safe harbor.

28. In the *WRS Reform NPRM*, the Commission proposed to require all renewal applicants to meet our renewal standard by filing a detailed renewal showing to demonstrate that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), and substantially complying with the Commission's rules (including any applicable performance requirements) and policies and the Act.<sup>67</sup> We now turn toward a consideration of this proposed standard for cases in which a renewal applicant does not meet one of the safe harbors we have adopted herein.

29. The renewal showing proposed in the *WRS Reform NPRM* followed the paradigm adopted in the *700 MHz Report and Order*.<sup>68</sup> After the release of the *WRS Reform NPRM*, the Commission has adopted the 700 MHz Commercial Services renewal paradigm in four additional services—AWS-4,<sup>69</sup> H Block,<sup>70</sup> AWS-3,<sup>71</sup> and 600 MHz.<sup>72</sup> Specifically, the Commission proposed to consider the following factors when evaluating whether a renewal showing met the renewal standard: (1) the level and quality of service provided by the applicant (e.g., the population served, the area served, the number of subscribers, the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to tribal lands; and (5) any other factors associated with a licensee's level of service to the public.<sup>73</sup>

30. Many commenters object to the adoption of this renewal showing for all WRS licensees. These commenters argue that the proposed renewal showing is complex and would impose substantial costs and burdens on licensees.<sup>74</sup> Other commenters assert that the proposed renewal process is unclear and creates uncertainty for licensees.<sup>75</sup> Still other commenters maintain that the proposed process requests information already in the Commission's possession,<sup>76</sup> requests detailed information that licensees do not maintain,<sup>77</sup> and may require disclosure of competitively sensitive information.<sup>78</sup> We

<sup>67</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7002, para. 17.

<sup>68</sup> *Id.* at 7006, para. 23.

<sup>69</sup> *AWS-4 Report and Order*, 27 FCC Rcd at 16201-02, paras. 269-72.

<sup>70</sup> *H Block Report and Order*, 28 FCC Rcd at 9567-69, paras. 223-27.

<sup>71</sup> *AWS-3 Report and Order*, 29 FCC Rcd at 4667-69, paras. 157-62.

<sup>72</sup> *600 MHz Report and Order*, 29 FCC Rcd at 6885-87, paras. 785-90.

<sup>73</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7006, para. 23, citing *700 MHz First Report and Order*, 22 FCC Rcd at 8093, para 75. See also *WRS Reform NPRM*, Appx. A, proposed section 1.949(c).

<sup>74</sup> E.g., CTIA 2017 Comments at 2; MetroPCS Comments at 19, 22.

<sup>75</sup> E.g., Sprint Comments at 7; WCAI Comments at 2; LMCC Comments at 10; USA Mobility Comments at 3; EWA Comments at 2; T-Mobile Comments at 1-2; USCC Comments at 1; MetroPCS Comments at 19, 22; Blooston Comments at 15; Fixed Wireless Reply Comments at 5; CTIA Comments at 8; Sensus Reply Comments at 2.

<sup>76</sup> E.g., Sprint Comments at 5-6; CTIA Comments at 16; Fixed Wireless Reply Comments at 3.

<sup>77</sup> Verizon Comments at 4.

<sup>78</sup> E.g., Sprint Comments at 5; T-Mobile Comments at 9-10; CTIA Comments at 14.

acknowledge commenters' many concerns regarding a general requirement that all WRS licensees submit detailed renewal showings and have concluded that, in many cases, streamlined applications containing the required certifications for safe harbor treatment will be sufficient to ensure that we renew licenses in the public interest, consistent with the Act. We emphasize that licensees that can take advantage of one of the "safe harbor" renewal applications described above will not be required to submit a renewal showing as part of their renewal applications. Rather, only licensees that cannot satisfy one of the enumerated safe harbors will be required to file a detailed renewal showing. To fulfill our statutory mandate to ensure efficient spectrum use consistent with the public interest, where a licensee does not satisfy one of our streamlined processes, we must undertake a closer examination of a licensee's record of service or operation over its license term. Consistent with the Commission's conclusions in the AWS-4, H Block, AWS-3, and 600 MHz proceedings, we find that the renewal showing we adopt today, applied in the limited circumstances described herein, is in the public interest and its benefits outweigh any likely costs.

31. Accordingly, licensees that cannot satisfy our renewal standard under one of the enumerated safe harbors can nonetheless meet the renewal standard by demonstrating that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), using the following renewal showing, as applicable:<sup>79</sup>

- (1) the level and quality of service/operation provided by the applicant (e.g., for service—the population served, the area served, the number of subscribers, the services offered; for operation—the number of users (if applicable), the operating area, the type of operation);
- (2) the date service/operation commenced, whether service/operation was ever interrupted, and the duration of any interruption or outage;
- (3) the extent to which service/operation is provided to/in rural areas;
- (4) the extent to which service/operation is provided to/in tribal lands; and
- (5) any other factors associated with a licensee's level of service to the public/level of operation.

32. Each of the factors listed above to be considered in a renewal showing directly relates to the renewal standard we adopt today—service or operation over the license term. The Commission will consider the totality of all the factors on a case-by-case basis to determine if a licensee has demonstrated over the course of its license term that it has provided and continues to provide service to the public, or has operated and continues to operate under the license to meet the licensee's private, internal communications needs.

33. In the *WRS Reform NPRM*, the Commission also asked whether a variety of other factors should be incorporated into our renewal rules.<sup>80</sup> Many commenters object to the collection of additional data in support of a renewal showing.<sup>81</sup> CTIA, for example, asserts that "[r]equiring licensees to address these additional criteria would add substantially more time to the renewal process for both the applicants and the Commission, without any countervailing public interest benefits."<sup>82</sup> On balance, we agree that the costs of requesting additional information beyond the renewal showing we adopt today would outweigh the benefits of such additional information. We thus decide not to add further factors at this time to our renewal showing requirements. We find that our renewal framework strikes an appropriate balance

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<sup>79</sup> We note that our factors are modified from those proposed in the *WRS Reform NPRM* to accommodate private, internal operation of WRS licenses in our renewal standard and renewal showing requirements. See *WRS Reform NPRM*, 25 FCC Rcd at 7008, para. 28 (querying whether the factors proposed for consideration in connection with renewal of geographic-area licenses used to provide service should also be used where facilities are used to meet a licensee's private, internal communications needs).

<sup>80</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7007-08, paras. 26-29.

<sup>81</sup> E.g., T-Mobile Comments at 9-10; Sprint Comments at 6; CTIA Comments at 14; USCC Comments at 6; MetroPCS Comments at 21.

<sup>82</sup> CTIA Comments at 14.

between our need for information to fully evaluate renewal applications that cannot meet our safe harbors and minimizing burdens on licensees.

34. We disagree with commenters that argue that the option of filing a full renewal showing would be contrary to the Commission's original proposal for site-based services. Under the Commission's prior proposal, if a site-based licensee could not make the requisite certification, the renewal application could not be granted and the spectrum would be returned to the Commission. Under the renewal framework we adopt today, if a site-based licensee cannot meet the requirements of the safe harbor, it may choose to file a renewal showing to explain why it should nonetheless retain its license, thus providing additional flexibility to such a licensee.

**a. Implementation Timeline**

35. The renewal framework we adopt today represents, for some WRS licenses, a significant change in how the Commission will evaluate and process renewal applications going forward.<sup>83</sup> For licensees that already meet our renewal standard, our unified renewal paradigm presents a streamlined process using safe harbors with minimal filing burdens and certain, timely renewal processing. We recognize, however, that other licensees will need time to come into compliance with the renewal standard. Accordingly, we adopt an implementation schedule that will make the benefits of our renewal framework available immediately for those licensees most likely able to avail themselves of our streamlined processes, but provide ample time for those licensees that may need to come into compliance with our new rules.<sup>84</sup> In all instances, compliance with the renewal standard, via either a safe harbor or renewal showing, will be assessed from the effective date of the new rules. Thus, for example, the requirement to provide continuous service/operation does not cover periods before the effective date of those rules. Nor does a licensee seeking safe harbor treatment need to certify that it met the necessary criteria during time periods prior to the effective date.<sup>85</sup>

36. *Site-based Licenses.* For site-based licensees, the new renewal paradigm is akin to their existing renewal requirements. As discussed above, at the time a site-based service provider files a renewal application, it should be operating as licensed. Thus, current renewal requirements for site-based licensees are much like the safe harbor we adopt for such licensees. We find that our renewal standard and renewal processes (whether streamlined or entailing an evaluation of the licensee's full renewal showing) should be made available to site-based licensees as soon as possible and thus determine that such rules will be applied to those licensees without a transition period, with one exception, effective upon their applicable effective dates. For microwave licenses in the Common Carrier Fixed Point-to-Point Microwave Service,<sup>86</sup> licensees will not be required to comply with the revised renewal rules for site-based licenses until October 1, 2018, in order to provide sufficient time for them to undertake a compliance review necessary to make the required certification regarding operation.<sup>87</sup> Existing service-specific renewal rules will remain in effect until the renewal rules adopted herein become effective.

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<sup>83</sup> Because substantial compliance with applicable FCC rules and policies and the Act is an ongoing obligation of licensees, this will be assessed over the entire term of the license at renewal.

<sup>84</sup> The clear renewal framework we adopt today coupled with a generous implementation timeline will provide parties with ample time to adjust their business practices as necessary to accommodate our new rules. Armed with an understanding of our renewal requirements, parties to transactions can examine the level of a licensee's continuing service or operations, satisfy for themselves whether they can make an appropriate safe harbor or renewal showing at the license expiration date given the licensee's operation, and act accordingly.

<sup>85</sup> See *Verizon July 27, 2017 Ex Parte* at 1 (requesting clarification that licensees do not have to certify compliance with any safe harbor criteria for periods of time prior to the effective date of the new rules); *CTIA July 27, 2017 Ex Parte* at 3-4.

<sup>86</sup> 47 CFR pt. 101, subpt. I.

<sup>87</sup> See Appendix A § 1.949(c).

Applications filed prior to the effective date of the new rules will be processed under the rules in effect when they are filed.

37. *Geographic-area Licenses.* Given the inconsistency of our renewal rules across wireless services, the Commission has seen markedly different renewal submissions by licensees describing the level of service or operation in the various specific services within the WRS. Some licensees have submitted renewal applications clearly demonstrating service or operation over the entire license term, which would meet the renewal standard we adopt today. Others have filed applications that demonstrate service or operation over significantly less than the entire license term, which would not meet our new renewal standard contemplating ongoing service or operation during the license term. We seek to provide sufficient time to geographic-area licensees that have yet to be subject to the renewal standard so that they can comply with the new standard (indeed, some licensees are not yet required to even demonstrate service over the license term). We determine that the renewal standard and the renewal framework will take effect for such licensees on January 1, 2023, replacing the existing service-specific renewal rules, giving licensees at least five years to comply with our new renewal rules (giving all licensees sufficient time to show service over the license term, starting from the effective date of our new renewal rules). Existing service-specific renewal rules will cease to be effective as of January 1, 2023. We note, however, that licensees in the 700 MHz,<sup>88</sup> AWS-4,<sup>89</sup> H Block,<sup>90</sup> AWS-3,<sup>91</sup> and 600 MHz<sup>92</sup> services already are subject to the renewal standard that we adopt today for all WRS geographic licenses. Accordingly, we conclude that these licensees should be able to avail themselves of the safe harbors and associated streamlined procedures that we adopt today. Thus, for licensees in the 700 MHz, AWS-4, H Block, AWS-3, and 600 MHz services, our safe harbor rules will apply immediately upon their effective dates. Existing service-specific renewal rules will remain in effect until the renewal rules adopted herein become effective. Applications filed prior to the effective date of the new rules will be processed under the rules in effect when they are filed.

#### **b. Geographic and Site-based Licensed Services—Other Requirements**

38. Consistent with the Commission's proposal in the *WRS Reform NPRM*, we apply a single regulatory compliance demonstration requirement to all renewal applicants, whether licensed by geographic area or by site. In addition, we prohibit the filing of competing applications against such renewal applications. Further, if a renewal application cannot be granted, the associated spectrum generally will be returned to the Commission for re-licensing under the applicable processes.

##### **(i) Regulatory Compliance Demonstration**

39. In the *700 MHz First Report and Order*, the Commission stated that, as part of their renewal filing, renewal applicants must demonstrate "that they have substantially complied with all applicable Commission rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements."<sup>93</sup> As the Commission stated in the *WRS Reform NPRM*, such a regulatory compliance demonstration serves the public interest by facilitating the Commission's evaluation of the character and other qualifications of a renewal applicant.<sup>94</sup>

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<sup>88</sup> 47 CFR § 27.14(b)-(c).

<sup>89</sup> 47 CFR § 27.14(q)(7).

<sup>90</sup> 47 CFR § 27.14(r)(6).

<sup>91</sup> 47 CFR § 27.14(s)(6).

<sup>92</sup> 47 CFR § 27.14(t)(6).

<sup>93</sup> See *700 MHz First Report and Order*, 22 FCC Rcd at 8093, para. 75.

<sup>94</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7011, para. 37. See also 47 U.S.C. § 308(b).

40. To aid in this evaluation, the Commission proposed a detailed submission of documents regarding compliance by the licensee and certain defined affiliates.<sup>95</sup> Industry commenters uniformly opposed adoption of the proposed regulatory compliance demonstration as a prerequisite to renewal on the basis that it is onerous and unduly burdensome and could impose significant costs, particularly on rural and regional carriers.<sup>96</sup>

41. We have a statutory duty to ensure that licensees substantially comply with all applicable Commission rules and policies and the Act. At the same time, where possible and practicable, we seek to streamline the existing renewal application processes and minimize filing burdens on licensees. In lieu of the regulatory compliance demonstration proposed in the *WRS Reform NPRM*, we conclude that we can perform our duties and further our public interest goals effectively by requiring a renewal applicant to certify that it has substantially complied with all applicable FCC rules, policies, and the Act.<sup>97</sup> If a particular renewal applicant is unable to make the substantial compliance certification, it will need to provide an explanation of the circumstances preventing such a certification and why renewal of the subject license should still be granted.

### (ii) Elimination of Comparative Renewal Rules for WRS

42. As proposed in the *WRS Reform NPRM* and consistent with the action we took in the recent *WRS Reform First Report and Order* in this proceeding adopted in tandem with the *Cellular Reform Second Report and Order*,<sup>98</sup> and in several other proceedings over the last decade, we prohibit the filing of competing applications for all WRS and eliminate the remaining comparative renewal procedures and requirements across various rule parts.

43. The *WRS Reform NPRM* proposed to prohibit the filing of competing renewal applications for all WRS as part of its proposed uniform WRS renewal process.<sup>99</sup> The majority of commenters support the Commission's proposal to eliminate service-specific rules regarding the filing of competing applications and the use of comparative hearings to resolve them.<sup>100</sup> A number of commenters

<sup>95</sup> *Id.* at 7011-12, para. 38. If there were no FCC orders finding violations of the Communications Act or any FCC rule or policy, the Commission proposed that a licensee certify the absence of any such findings as part of the renewal application. *Id.* at 7012, para. 39.

<sup>96</sup> T-Mobile Comments at 11-12; LightSquared Comments at 5; HITN Comments at 4; LMCC Comments at 7; Fixed Wireless Reply Comments at 2-3; EWA Comments at 6-7; Clarendon Comments at 6; Blooston Comments at 11; CTIA Comments at 19; Verizon Comments at 13; Sprint Comments at 14; USCC Comments at 11; PacifiCorp Comments at 8; Southern Comments at 6; Entergy Reply Comments at 4; Fixed Wireless Reply Comments at 3-4; NCTA Reply Comments at 5; USCC Reply Comments at 7; RCA Reply Comments at 3; EWA Reply Comments at 6.

<sup>97</sup> We also note that renewal applicants, like other filers of the Form 601, will continue to be required to answer three character qualifications questions on the form.

<sup>98</sup> *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area; Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27; Interim Restrictions and Procedures for Cellular Service Applications; Amendment of Parts 0, 1, and 22 of the Commission's Rules with Regard to Frequency Coordination for the Cellular Service; Amendment of Part 22 of the Commission's Rules Regarding Certain Administrative and Filing Requirements; Amendment of the Commission's Rules Governing Radiated Power Limits for the Cellular Service; Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services; 2016 Biennial Review of Telecommunications Regulations*, WT Docket Nos. 12-40, 10-112, and 16-138; RM Nos. 11510 and 11660, Second Report and Order, Report and Order, and Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 2518, 2569-70, para. 150 (2017) (*Cellular Second Report and Order and WRS Reform First Report and Order*).

<sup>99</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7012-13, paras. 40-42.

<sup>100</sup> *See, e.g.*, AT&T Comments at 29-31; Blooston Comments at 4-5; CTIA Comments at 28-30; FiberTower Comments at 4; LightSquared Comments at 6; MariTEL Comments at 1; MetroPCS Comments at 5, 7; Sprint

(continued...)

maintain that the comparative renewal process is an outdated vestige of licensing rules predating our current reliance on auctions in many services.<sup>101</sup>

44. We delete today the remaining service-specific comparative renewal rules and prohibit the filing of competing renewal applications for all WRS. This approach is consistent with the Commission's determinations in many other commercial wireless service proceedings over the last ten years—including those for the AWS-3 and AWS-4 Bands, the H Block, the 600 MHz Band, and the 700 MHz Commercial Services Band<sup>102</sup>—and with our elimination of comparative renewal rules applicable to the Cellular Service. The same logic that the Commission used in exempting those bands from comparative renewal applications likewise applies to the remaining WRS bands. The Commission previously found, and commenters agree here, that the public interest is not served by the filing of time-consuming and costly competing applications,<sup>103</sup> and a prohibition on competing applications will “protect[] the public interest without creating incentives for speculators to file ‘strike’ applications.”<sup>104</sup>

45. The few commenters that support retention of the comparative renewal application rules argue that, without the ability to file competing applications, there is no way to discover disqualifying facts about incumbent licensees.<sup>105</sup> We disagree. The renewal requirements we adopt today will provide the Commission with ample information to determine whether a particular license renewal is in the public interest.<sup>106</sup> Some commenters also argue that competing applications are rare, but this only strengthens the rationale to eliminate the outdated rules. We find that the best course is to remove the comparative renewal rules and harmonize our approach across spectrum bands—many of which, as discussed above, already prohibit the filing of competing applications. In the event that an entity lacks standing to file a petition to deny a WRS license renewal application,<sup>107</sup> it may still bring relevant facts to the attention of the Commission by means of an informal filing.

46. If a license is not renewed, the associated spectrum will be returned to the Commission as discussed below, allowing parties that may have been inclined to file a competing application to participate in the auction of spectrum recovered from geographic licensees or apply for spectrum recovered from a Cellular or site-based licensee. Our experience and the record confirm the

(Continued from previous page) \_\_\_\_\_

Comments at 14-15; T-Mobile Comments at 3-4; Verizon Comments at 14-15; CTIA 2017 Comments at 8-9; Verizon 2017 Comments at 7. The few commenters that support retention of the existing renewal rules argue that, without the ability to file competing applications, there is no way to discover disqualifying facts about incumbent licensees and, moreover, that there is no reason to eliminate the rules because competing applications are rare. CommNet Comments at 6; Green Flag Comments at 7-9; USCC Comments at 8.

<sup>101</sup> E.g., Blooston Comments at 4; FiberTower Comments at 4; Sprint Comments at 15-16; T-Mobile Comments at 3.

<sup>102</sup> See *700 MHz First Report and Order*, 22 FCC Rcd at 8067, 8093-94, para. 76 (eliminating rules that permit competing applications and comparative hearings for license renewal for 700 MHz Service licensees); *AWS-4 Report and Order*, 27 FCC Rcd at 16202, para. 272 (same, for AWS-4); *H Block Report and Order*, 28 FCC Rcd at 9568, para. 224 (same, for H Block); *AWS-3 Report and Order*, 29 FCC Rcd at 4668, para. 162 (same, for AWS-3); *600 MHz Report and Order*, 29 FCC Rcd at 6887, para. 790 (same, for 600 MHz).

<sup>103</sup> See *AWS-3 Report and Order*, 29 FCC Rcd at 4668, para. 162 & n.485. See also Blooston Comments at 4; CTIA Comments at 28; FiberTower Comments at 4; Verizon Comments at 14.

<sup>104</sup> *700 MHz First Report and Order*, 22 FCC Rcd at 8093, para. 76. See also *AWS-4 Report and Order*, 27 FCC Rcd at 16202, para. 272; *H Block Report and Order*, 28 FCC Rcd at 9568, para. 224; *600 MHz Report and Order*, 29 FCC Rcd at 6887, para. 790. See also AT&T Comments at 31; Blooston Comments at 4; CTIA Comments at 28; LightSquared Comments at 6-7; MetroPCS Comments at 5; Sprint Comments at 14-15; T-Mobile Comments at 3.

<sup>105</sup> CommNet Comments at 6; Green Flag Comments at 7-9; USCC Comments at 8.

<sup>106</sup> See, e.g., *AWS-3 Report and Order*, 29 FCC Rcd at 4669, para. 162.

<sup>107</sup> See CommNet Comments at 5-8.

Commission's finding ten years ago in the *700 MHz First Report and Order* that "[t]he existing petition to deny process, coupled with the ability of a petitioner to participate in any subsequent auction to re-license spectrum that is returned to the Commission for lack of renewal, creates sufficient incentives to challenge inferior service or poor qualifications of licensees at renewal."<sup>108</sup>

**(iii) Return of Spectrum to Commission if Renewal Application Is Denied**

47. Consistent with the Commission's proposals in the *WRS Reform NPRM*,<sup>109</sup> we conclude that, if a WRS licensee cannot meet the renewal standard and its license cannot be renewed, its licensed spectrum will be returned automatically to the Commission.<sup>110</sup> For site-based licenses, we will continue to apply our policy of having spectrum revert to a geographic area licensee, if applicable, if an underlying site-based authorization is not renewed.<sup>111</sup>

48. One overarching goal in this proceeding is to ensure that valued spectrum resources are rapidly put to their highest and best use. Armed with clear information on renewal and service continuity requirements, licensees and other interested parties may take appropriate actions relative to their business plans. A second goal in this proceeding is to provide licensees with certainty and clarity regarding the rules that apply to them and the consequences for failing to meet those rules. The Commission's existing spectrum reversion rule we employ today serves these dual goals. As CTIA aptly argues, the automatic return of spectrum from non-renewed licenses "would help streamline and expedite the transition of the licenses to new licensees, reduce administrative burdens, and minimize the amount of time the underlying spectrum remains unused."<sup>112</sup> We agree. If a licensee cannot meet the renewal standard (via safe harbor or renewal showing) or it has permanently discontinued service, or its regulatory compliance certification is insufficient, its renewal application cannot be granted, and its licensed spectrum will return automatically to the Commission.<sup>113</sup>

**4. Wireless Radio Services Excluded From Rulemaking**

49. Finally, we conclude that certain Wireless Radio Services should be excluded from the renewal requirements we adopt today. Specifically, we will not apply the revised renewal paradigm to Wireless Radio Services licenses that have no construction obligations, including services where

<sup>108</sup> *700 MHz First Report and Order*, 22 FCC Rcd at 8093, para. 76.

<sup>109</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7013-14, para. 43.

<sup>110</sup> See Appendix A, § 1.949(g).

<sup>111</sup> See, e.g., 47 CFR §§ 27.1206 (defining the Geographic Service Area (GSA) for incumbent site-based licensees of BRS stations and stating that, "[i]f the license for an incumbent BRS station cancels or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the [geographic] licensee . . ."), 101.1331 (same concerning frequencies associated with incumbent authorizations in the 928/959 MHz bands (Multiple Address Systems)). See also *id.* §§ 80.385(c) (providing that any AMTS frequency blocks that are "recovered" will "revert automatically to the holder of the geographic area license within which such frequencies are included," and "where there is no geographic area licensee," the blocks will be "retained by the Commission for future licensing"), 90.175(n) (same regarding any recovered channels in the 800 MHz SMR service).

<sup>112</sup> CTIA Comments at 30. We reject Sprint's request that we place renewal applications with insufficient renewal showings into the Termination Pending process, as doing so will add another layer of delay into the renewal processing approach, with no adequate justification for doing so. Sprint Comments at 15. Licensees are responsible for filing accurate, complete applications. If a renewal application is denied by the Commission, an applicant may file a petition for reconsideration pursuant to 47 CFR § 1.106, or an application for review pursuant to 47 CFR § 1.115, as appropriate. 47 CFR §§ 1.106, 1.115.

<sup>113</sup> See Appendix A, § 1.949(g).

operations are licensed by rule (and thus there is no individual “license” to renew) or to Wireless Radio Services that can be considered to involve a “personal” license. These services are listed in Appendix I.

### **B. Permanent Discontinuance of Operations for Wireless Radio Services**

50. The Commission’s mandate to promote spectrum efficiency is furthered when wireless licensees offer service to the public in a timely manner, consistent with our performance requirements, and provide such services continuously. Indeed, all WRS licensees are currently subject to our Part 1 rule governing permanent discontinuance, which provides that an authorization automatically terminates, without specific Commission action, if service is “permanently discontinued.”<sup>114</sup> To promote service continuity, we here replace widely disparate service-specific rules dealing with permanent discontinuance with a standardized rule for all WRS licensees. This rule will work in concert with our construction and renewal obligations to ensure that licensees provide service in a timely manner, continue to provide service over the term of the license, and do not discontinue service for such an extended period of time that it should be deemed permanent.

51. Current service-specific rules do not clearly and consistently define permanent discontinuance resulting in license termination, with a few services defining the term<sup>115</sup> and many services completely lacking any definition.<sup>116</sup> Thus, after meeting any service-specific construction and renewal requirements, some licensees in a service whose rules provide no definition of “permanent” discontinuance might conclude that they are permitted to discontinue service for long periods of time, and that such suspension of service would not trigger automatic license termination. In contrast, other licensees/competitors in a service whose rules define “permanent” discontinuance as specific amount of time during which operations were suspended (e.g., 90 days) would be subject to automatic license termination if they discontinued service to subscribers for that specified length of time.<sup>117</sup> As the Commission noted in the *WRS Reform NPRM*, the public interest is not served by such marked regulatory disparities.<sup>118</sup> The Commission accordingly proposed to adopt a uniform discontinuance of service rule for Parts 22, 24, 27, 80, 90, 95, and 101 Wireless Radio Services.<sup>119</sup> We find that the adoption of a uniform regulatory framework governing the permanent discontinuance of operations for Wireless Radio Services will serve the public interest by: (1) affording similarly situated licensees and like services comparable regulatory treatment; (2) providing licensees and other interested parties clarity and certainty to facilitate business and network planning; and (3) ensuring that valuable spectrum is not underutilized. The rules we adopt today strike the appropriate balance between providing licensees with operational flexibility and ensuring spectrum is not warehoused and does not lie fallow.

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<sup>114</sup> 47 CFR § 1.955(a)(3). Section 1.955(a)(3) further provides that “[t]he Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section” and requires licensees to “notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation.” *Id.*

<sup>115</sup> Part 22, for example, provides that a “station that has not provided *service to subscribers* for 90 continuous days is considered to have been permanently discontinued.” 47 CFR § 22.317 (emphasis added). Section 90.157(a) (applicable to most Part 90 services) provides that an authorization automatically cancels when a station has not operated for 365 days. *Id.* § 90.157(a).

<sup>116</sup> See *WRS Reform NPRM*, 25 FCC Rcd at 7017-18, para. 52. Many services, including those authorized by competitive bidding (such as our Part 24 Personal Communications Service rules and our Part 27 Miscellaneous Wireless Communication Services rules) contain no definition of permanent discontinuance. The current service-specific permanent discontinuance requirements are listed in Appendix F.

<sup>117</sup> See *WRS Reform NPRM*, 25 FCC Rcd at 7017, para. 50, citing 47 CFR § 22.317.

<sup>118</sup> *Id.* at 7017-18, para. 52.

<sup>119</sup> *Id.* at 7018, para. 53.

52. Most but not all commenters support a uniform regulatory framework governing permanent discontinuance.<sup>120</sup> Commenters disagree, however, on the appropriate discontinuance period to be applied to the various Wireless Radio Services, with some commenters supporting the Commission's proposed time periods<sup>121</sup> while other commenters seek a 365-day discontinuance period for all WRS licensees.<sup>122</sup>

53. Commenters are generally supportive of the Commission's proposal to apply the permanent discontinuance rule commencing on the date a licensee makes its initial construction showing or notification.<sup>123</sup> Some commenters, however, ask that we commence the permanent discontinuance period on the date of a licensee's construction deadline,<sup>124</sup> while Sprint suggests that we use a licensee's final construction deadline date.<sup>125</sup>

54. Section 101.305 of our rules states that common carrier licensees in certain services must notify the Commission of involuntary discontinuance, reduction, or impairment of service within 48 hours,<sup>126</sup> and that voluntary discontinuance by a common carrier licensee in the identified services must occur only with prior Commission approval, under the procedures of Part 63 of the Commission's rules.<sup>127</sup> AT&T asks that we take this opportunity to delete Section 101.305, arguing that it is both obsolete and duplicative of other rules, specifically Section 101.65<sup>128</sup> and that the rule's concern for protecting "communities" is misplaced.<sup>129</sup>

55. After reviewing the extensive record in this proceeding, we find that the public interest will be best served by adopting a uniform regulatory framework governing service continuity. We therefore adopt new Section 1.953 as it appears in Appendix A and delete multiple rule sections

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<sup>120</sup> *E.g.*, Blooston Comments at 24-25; CTIA Comments at 31; Sprint Comments at 16; T-Mobile 2017 Reply Comments at 8; Verizon 2017 Comments at 7. *But see* USA Mobility Comments at 2, 4, 7 (arguing that the proposed definition of permanent discontinuance is rigid and inflexible); Green Flag Comments at 11-12. *See also* James Edwin Whedbee Comments at 6 (proposing licensees seek special temporary authorizations (STA) if they wish to discontinue operations for limited periods of time).

<sup>121</sup> *E.g.*, LMCC Comments at 11-12; MetroPCS Comments at 8; Sprint Comments at 16-17; Entergy Reply Comments at 6-7.

<sup>122</sup> *E.g.*, NCTA Reply Comments at 5; Blooston Comments at 25-27; Verizon Comments at 15; LightSquared Comments at 8; CTIA Comments at 32; Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, 4 (filed June 3, 2016) (CCA June 3, 2016 *Ex Parte*).

<sup>123</sup> *E.g.*, Verizon Comments at 16; CTIA Comments at 32.

<sup>124</sup> *See* CCA June 3, 2016 *Ex Parte* at 2 (recommending that any service continuity requirement be applied only after any updated construction deadline(s) become effective). *See also* LightSquared Comments at 8-9 (maintaining that for those Part 27 WRS licensees for which no interim construction showing prior to a first renewal is required, the permanent discontinuance rule should apply after the first renewal).

<sup>125</sup> Sprint Comments at 17-18.

<sup>126</sup> 47 CFR § 101.305(a).

<sup>127</sup> 47 CFR § 101.305(b). *See also* 47 CFR Part 63, "Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status."

<sup>128</sup> AT&T Comments at 35. Section 101.65(a) provides that a license is automatically forfeited upon voluntary removal or alteration of the facilities, such that the station does not operate for 30 days or more, while section 101.65(b) states that a station that does not operate for one year or more is considered to have been permanently discontinued. 47 CFR § 101.65(a)-(b).

<sup>129</sup> AT&T Comments at 36.

governing permanent discontinuance in specific Wireless Radio Services.<sup>130</sup> As recognized by the Commission in four other proceedings and by commenters in this proceeding, the approach we adopt today strikes an appropriate balance between affording licensees operational flexibility and ensuring that licensed spectrum is efficiently utilized.<sup>131</sup> As CTIA observes, a uniform discontinuance framework will provide regulatory certainty that “can encourage investment and promote enhanced services.”<sup>132</sup> We disagree with those commenters that oppose the adoption of any permanent discontinuance rules.<sup>133</sup> Allowing licensees unfettered discretion to determine how long scarce spectrum resources lie fallow after meeting relevant construction requirements would be inconsistent with the intent of those requirements and would directly contradict our statutory obligation to “prevent stockpiling or warehousing of spectrum by licensees or permittees.”<sup>134</sup>

56. We conclude that these changes further one of the underlying goals in this proceeding—to provide licensees and other interested parties with clarity and certainty regarding the service continuity obligations under our rules.<sup>135</sup> Armed with this information, licensees can make rational decisions regarding their business plans and network operations. We replace the existing hodgepodge of discontinuance rules with a unified regulatory framework that ensures regulatory parity across services and license types and applies the rules on a per-license basis. Under the rules we adopt today for all geographically licensed radio services, permanent discontinuance of service for a given license will be defined as 180 consecutive days during which a licensee does not operate or, in the case of WRS licensees providing service to customers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.<sup>136</sup> The Commission adopted an identical framework for AWS-4, H Block, AWS-3, and 600 MHz, which are all licensed on a geographic basis.<sup>137</sup>

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<sup>130</sup> Section 90.157 of our rules addresses discontinuance of operations for Private Land Mobile Radio Services. 47 CFR § 90.157. We delete section 90.157(a), which addresses discontinuance generally, and move section 90.157(b), which addresses certain administrative requirements for DSRCS Roadside Units (RSUs) in the 5850-5925 MHz band, to section 90.357(b) of our rules. 47 CFR § 90.357(b).

<sup>131</sup> See, e.g., *H Block Report and Order*, 28 FCC Rcd at 9572, para. 231; *AWS-3 Report and Order*, 29 FCC Rcd at 4667-68, para. 159; *600 MHz Report and Order*, 29 FCC Rcd at 6886, para. 787.

<sup>132</sup> CTIA Comments at 31.

<sup>133</sup> See USA Mobility Comments at 4; Green Flag Comments at 11-12. Likewise, we disagree with USA Mobility’s argument that our permanent discontinuance rules undermine our secondary markets framework. See USA Mobility Comments at 4, citing *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, First Report and Order, 18 FCC Rcd 20604 (2003) (*Secondary Markets First Report and Order*); Second Report and Order and Order on Reconsideration, 19 FCC Rcd 17503 (2004). To the contrary, setting limits on the amount of time a licensee can discontinue service will incentivize licensees to use their licenses or promptly divest them to other parties that will use the spectrum in a timely fashion. Ensuring that spectrum is timely put to its highest and best use is the basis for our secondary markets policies. *Secondary Markets First Report and Order*, 18 FCC Rcd at 20609, para. 7.

<sup>134</sup> See 47 U.S.C. § 309(j)(4)(B)-(C).

<sup>135</sup> We determine that a licensee may attribute to itself the buildout or performance activities of its lessee(s) under a spectrum manager leasing arrangement or under a long-term *de facto* transfer spectrum lease for purposes of complying with our service continuity rules. See 47 CFR §§ 1.9020(d)(5)(i), 1.9030(d)(5)(i). We note, however, that the licensee is accountable for any permanent discontinuance and “the rules will be enforced against the licensee regardless of whether the licensee was relying on the activities of a lessee to meet particular performance requirements.” *Id.* §§ 1.9020(d)(5)(i), 1.9030(d)(5)(iii).

<sup>136</sup> See Appendix A, § 1.953(b). The Part 22 800 MHz Cellular Radiotelephone Service (Cellular Service) is treated as a geographically licensed service for the purpose of the new section 1.953 that we adopt today, notwithstanding Cellular licensees’ continued site-based access to Unserved Area to expand their existing licensed area (Cellular Geographic Service Area (CGSA)).

<sup>137</sup> See 47 CFR § 27.17.

In addition, for all radio services licensed by site, permanent discontinuance of service for a given license will be defined as 365 consecutive days during which a licensee does not operate or, in the case of WRS licensees providing service to customers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.<sup>138</sup> A licensee's authorization will automatically terminate, without specific Commission action, if it permanently discontinues service.<sup>139</sup>

57. Our rules distinguish between wireless providers providing service to subscribers and private licensee operation. In accordance with our proposal, for wireless providers, we define "permanently discontinued" as a period of 180 or 365 consecutive days (for geographic and site-based licenses, respectively) during which the licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to, the provider. We adopt a different approach for wireless licensees that use their licenses for private, internal communications, however, because such licensees generally do not provide service to unaffiliated subscribers.<sup>140</sup> For such private, internal communications, we define "permanent discontinuance" as a period of 180 or 365 consecutive days (for geographic and site-based licenses respectively) during which the licensee does not operate.<sup>141</sup>

58. After careful consideration, we conclude that the different rules we have crafted here for geographic versus site-based licenses are warranted by their differing operational characteristics. Under a geographic license, a licensee constructs and operates its entire network in the market under the umbrella of its geographic license. As MetroPCS explains, wireless carriers constantly discontinue individual sites or channels as they reconfigure their networks to increase and adjust capacity.<sup>142</sup> Our goal in this proceeding is not to hamper a licensee's normal network design and reconfiguration processes. Licensees should continue to have the necessary flexibility to add or remove network facilities consistent with their business strategies and network planning processes. Thus, for geographic licensees, the period of discontinuance will not start for a given license until all network facilities operated under that license within the licensed area are discontinued.<sup>143</sup>

59. By contrast, site-based licensees do not have the same flexibility as geographic licensees to decommission individual facilities. Site-based licensees are authorized to transmit from a particular location or over a particular path and have little flexibility to alter these parameters; ceasing operation on a frequency or band constitutes a total cessation of all service or operation under the site-based license and, unless otherwise provided, would therefore start the clock for measuring the length of discontinued service/operations on that licensed frequency/band at that location/path. Thus, to provide site-based licensees with the necessary flexibility to repair, modify, or upgrade their sites without fear of triggering a discontinuance period that could lead to the automatic termination of their license, we find that site-based licensees should be afforded a 365-day discontinuance period.

60. We disagree with commenters that argue that geographic licensees need a 365-day discontinuance period to adequately conduct technology upgrades and to avoid unfairly penalizing

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<sup>138</sup> See Appendix A, § 1.953(c).

<sup>139</sup> See Appendix A, § 1.953(a).

<sup>140</sup> See *H Block Report and Order*, 28 FCC Rcd at 9570, para. 230 (citing *WRS Reform NPRM*, 25 FCC Rcd at 7022, para. 68, Appx. A § 1.953).

<sup>141</sup> In other words, the rule that we adopt for private, internal communications does not include a requirement that the licensee provide service to an unaffiliated subscriber to avoid triggering the permanent discontinuance rule. See *H Block Report and Order*, 28 FCC Rcd at 9571, para. 230 & n.726; see also *WRS Reform NPRM*, 25 FCC Rcd at 7022, para. 68 & Appx. A § 1.953.

<sup>142</sup> MetroPCS Comments at 9.

<sup>143</sup> For existing Cellular licensees that have applied for, or have been granted, a CGSA expansion, "licensed area" here means the licensee's existing Cellular Service system, not counting the newly authorized but as yet unbuilt expansion area or any Unserved Area being proposed in a pending CGSA-expansion application.

licensees that operate in remote or highly seasonal areas of the country that may be uninhabited for more than half the year.<sup>144</sup> Given the flexibility geographic licensees have to turn off individual facilities in their licensed area so long as at least one facility continues to operate or continues to serve at least one non-affiliated subscriber, we find that 180 days provides licensees with ample time to effectuate network modifications without triggering a discontinuance period. Adoption of a 180-day discontinuance period substantially increases the amount of time licensees can discontinue operations in some services.<sup>145</sup> However, we decrease the discontinuance period from one year to 180 days in certain services, for example, certain Part 101 geographic licenses and 220-222 MHz geographic licenses (listed in Appendix F).<sup>146</sup> Given the operational flexibility afforded geographic area licensees discussed above, we conclude that this reduction will not create undue burdens on such licensees. Moreover, in the event additional time is needed, as discussed below, our rules will provide for an automatic 30-day extension<sup>147</sup> or licensees can file for a waiver under Section 1.925 of our rules if additional time is warranted.<sup>148</sup>

61. We agree with commenters who propose that the discontinuance rule should begin to apply on the date a licensee must meet its first performance requirement benchmark, i.e., the construction deadline. Using the construction deadline, versus the date a licensee actually makes its construction notification, will “avoid unduly punishing early adopters who are experimenting with certain business models or technologies, and who later deploy a different technology.”<sup>149</sup> If a licensee files its notification prior to the required construction deadline, the licensee should have the flexibility to alter its network as it sees fit, including turning down the entire system to accommodate changes in business plans or network design. If we were to apply the rule immediately upon the filing of a licensee’s construction showing or notification, it would create a disincentive for licensees to deploy their networks prior to their construction deadline. Such a result would be contrary to the Commission’s goal of rapid spectrum deployment.

62. In most cases, the first performance requirement benchmark is the interim or final construction deadline for geographic licenses, or the 12-month construction deadline for site-based

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<sup>144</sup> See, e.g., Verizon Comments at 15; LightSquared Comments at 8; CTIA Comments at 32; Blooston Comments at 26-27; NCTA Reply Comments at 5.

<sup>145</sup> See, e.g., 47 CFR § 22.317 (any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the end of the 90-day period and provided a date on which operation will resume, which date must not be in excess of 30 additional days). We note that the Commission adopted a new Cellular Service-specific rule governing permanent discontinuance, *Cellular Reform Second Report and Order*, 32 FCC Rcd at 2559, para. 112; 47 CFR § 22.947, and exempted Cellular Service licensees from application of section 22.317. *Cellular Reform Second Report and Order*, 32 FCC Rcd at 2559-60, para. 115. Because both the new Cellular rule and revised section 22.317 are subject to approval by OMB under the Paperwork Reduction Act, they have not yet taken effect. See also 47 CFR § 90.631(f) (with limited exception, an SMR licensee with facilities that have discontinued operations for 90 consecutive days is presumed to have discontinued operations).

<sup>146</sup> See 47 CFR §§ 101.65(b), 90.157. For any licensee with a shortened discontinuance period that is in discontinued status for more than 180 days but less than 365 days when our new permanent discontinuance rule takes effect, the period of discontinuance will begin as of the effective date of the new rule. Any such licensee that remains in discontinued status for more than 180 days from the effective date of our new permanent discontinuance rule will be found to have permanently discontinued and its license will automatically terminate.

<sup>147</sup> See Appendix A, § 1.953(f).

<sup>148</sup> 47 CFR § 1.925. The small number of geographic licensees whose markets are truly uninhabited more than half the year and that cannot maintain at least one operational facility during that period may avail themselves of our newly adopted automatic extension or existing waiver processes.

<sup>149</sup> CCA June 3, 2016 *Ex Parte* at 2.

licenses.<sup>150</sup> In a few cases, licensees have partitioned and/or disaggregated their licenses under current rules, and one or more of the resulting licenses does not have a construction deadline. Under the renewal standard adopted herein, these licenses must be operating by the end of the next full renewal term after their current license term to warrant renewal. As such, the discontinuance rules will apply to these partitioned/disaggregated licenses at that date. This approach provides consistent treatment in that licensees need only be concerned about permanent discontinuance after they are required to be operating (whether at their next construction deadline or renewal). The Commission adopted the same approach for AWS-4, H Block, AWS-3, and 600 MHz.<sup>151</sup>

63. In services where our rules currently contain no definition of permanent discontinuance, some licensees may have met their interim construction deadline, but have yet to reach their final construction deadline and may have discontinued operations as part of a business strategy or network plan. Absent a definition of permanent discontinuance, these licensees might have concluded that they could discontinue service for a long period without fear of automatic license termination.<sup>152</sup> While all covered WRS licensees must comply with our permanent discontinuance rules going forward, it is equitable to provide certain existing licensees with additional time to come into compliance with our rules, if necessary. Thus, in all services that do not currently have an explicit definition of permanent discontinuance, licensees will be given until January 1, 2019 to come into compliance with the rules we adopt today regarding permanent discontinuance.<sup>153</sup> If a licensee in these services is not providing service or is not operational on January 1, 2019, the discontinuance period would start on that date. After that date, a WRS licensee's authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined under our newly adopted rules.<sup>154</sup>

64. We decline to adopt Sprint's request to apply our permanent discontinuance rules only after a licensee's final construction date.<sup>155</sup> Our permanent discontinuance rules are designed to ensure that once a licensee is required to begin operations or provide service to the public by, e.g., an interim construction date, it continues to do so thereafter without substantial breaks in operation or service. If we generally do not apply our permanent discontinuance rules until after a licensee's final construction date, a licensee would be permitted to initiate service at its interim date and then shut down all operations until the final construction deadline. This result is contrary to our goal of promoting robust spectrum use. However, for some services a failure to meet an interim construction date results in acceleration of the final construction date and, in some cases, the license expiration date. For these services, if a licensee fails to meet the interim construction date, the discontinuance rule will apply after the licensee's accelerated final construction date.<sup>156</sup>

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<sup>150</sup> We emphasize that for Cellular licenses, for which there is no interim construction deadline (with one exception, *see* 47 CFR § 22.960), the grant of a modification application to expand an existing CGSA does not establish a new "required construction deadline" for purposes of application of the Part 1 permanent discontinuance rule that we are adopting today.

<sup>151</sup> *See* 600 MHz Report and Order, 29 FCC Rcd at 6889, para. 795; AWS-3 Report and Order, 29 FCC Rcd at 4670-71, para. 166; H Block Report and Order, 28 FCC Rcd at 9570-71, paras. 230-33; *see also* AWS-4 Report and Order, 27 FCC Rcd at 16203, para. 274 (adopting substantially similar permanent discontinuance requirements).

<sup>152</sup> *See* WRS Report NPRM, 25 FCC Rcd at 7027-28, para. 52.

<sup>153</sup> These services include Part 24 Personal Communications Services, certain Part 27 Miscellaneous Wireless Communications Services, Part 80 Safety and Special Radio Services, and Part 95 218-219 MHz Service.

<sup>154</sup> *See* Appendix A, § 1.953(a).

<sup>155</sup> Sprint Comments at 17-18.

<sup>156</sup> *Accord*, 47 CFR § 27.17(a)(1)(2). Under current rules, the discontinuance rule is applicable to AWS-4 (i) after the final buildout date if the AWS-4 licensee meets the interim buildout requirement or (ii) after the accelerated final buildout date if the AWS-4 licensee does not meet the interim buildout requirement. All AWS-4 licenses are held

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65. We exclude EBS from application of our new permanent discontinuance rule in light of the fact that this service presents unique issues that are under consideration in a separate proceeding. We find that we should consider EBS permanent discontinuance policies in the context of the comprehensive EBS rulemaking.<sup>157</sup> For the reasons stated above in our discussion of the renewal policy rules, we find that BRS licenses and the Motorola-held partitioned and/or disaggregated Part 80 VHF Public Coast licenses should be subject to the rules and policies adopted herein regarding permanent discontinuance.

66. Section 101.305 contains a number of requirements related to discontinuance, reduction, or impairment of services for some or all Part 101 services.<sup>158</sup> The bulk of these provisions relate to involuntary and voluntary discontinuance, reduction, or impairment of public communications services and required filings to be made with the Commission. In particular, Section 101.305(b) requires that covered licensees subject to Title II of the Act<sup>159</sup> must obtain prior approval from the Commission pursuant to the procedures set forth in Part 63 of the Commission's rules<sup>160</sup> before they may voluntarily discontinue, reduce, or impair public communications services to a community or part of a community.<sup>161</sup> Because Section 101.305 implicates the provision of service pursuant to Title II of the Act and given the limited record addressing this rule, we make no changes to this rule section at this time.

67. *Notification of permanent discontinuance.* We adopt the proposed filing requirement that a licensee that permanently discontinues service must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation.<sup>162</sup> Such a self-reporting requirement will facilitate timely and accurate recordkeeping of the Commission license and spectrum inventory. We note, however, that even if a licensee fails to file the required form requesting license cancellation, an authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined by our new rules.<sup>163</sup> We disagree with the two commenters who ask that we extend the notification period to 30 days.<sup>164</sup> Neither commenter advances a compelling basis for extending the notification period and the proposed 10-day period will ensure that our records are updated on a timely basis.

68. *Extension requests.* In addition, we adopt our proposed extension request process under which a request for a longer discontinuance period may be filed for good cause, subject to the requirement that it be filed at least 30 days before the end of the discontinuance period. Under this process, the filing of a request would automatically extend the discontinuance period a minimum of the later of an additional 30 days or the date upon which the Wireless Telecommunications Bureau (Bureau) acts on the request.<sup>165</sup> Commenters support our proposed automatic process for extension requests.<sup>166</sup> Such an express process

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by two affiliated licensees that did not meet their interim buildout requirement. Accordingly, as under the current rule, the discontinuance rule will be applicable to AWS-4 after the accelerated final buildout date.

<sup>157</sup> See *BRS/EBS Second FNPRM*.

<sup>158</sup> 47 CFR § 101.35.

<sup>159</sup> 47 U.S.C. Chapter 5, Subchapter II.

<sup>160</sup> 47 CFR pt. 63.

<sup>161</sup> 47 CFR § 101.35(b).

<sup>162</sup> See Appendix A, § 1.953(e).

<sup>163</sup> See *id.*

<sup>164</sup> Blooston Comments at 25 (referring to 47 CFR § 1.65, which notes that a Commission applicant must, within 30 days, notify the Commission of significant and substantial changes in a pending application); Verizon Comments at 15.

<sup>165</sup> See Appendix A, § 1.953(f).

<sup>166</sup> E.g., CCA Comments at 8-9; CTIA Comments at 31-32; Sprint Comments at 17; Verizon 2017 Comments at 8.

provides licensees with the flexibility to request a limited period of additional time for discontinuance of operations as necessitated by the licensee's business and operational needs and the certainty that they will receive a minimum of 30 additional days to resume service.

69. We decline, however, to adopt CCA's proposal for an automatic six-month extension period or case-by-case review.<sup>167</sup> An automatic extension of the permissible discontinuance period of six months runs contrary to our goals of timely and efficient use of the nation's scarce spectrum resources. Although we understand that unique circumstances may arise that necessitate a period of discontinuance beyond what is automatically permitted under our new rules, these circumstances can adequately be addressed by our existing waiver processes.<sup>168</sup>

70. *Roaming.* Several commenters ask that we clarify how our permanent discontinuance rules apply to licensees that serve roamers.<sup>169</sup> Blooston asserts that providing service to roamers is adequate to prevent permanent discontinuance of operations, noting that "[s]ome market-based licensees have built their business case on providing service to roamers, especially when they first complete construction," and before building up their own customer base.<sup>170</sup> Likewise, Verizon asks the Commission to confirm that providing roaming-only service is sufficient to satisfy the requirement that a licensee is serving at least one subscriber, and will not be in danger of losing its license for permanent discontinuance.<sup>171</sup> To this end, CommNet urges us to clarify that the term "subscriber" in Sections 1.953(b) and (c) includes incoming roamers.<sup>172</sup>

71. We conclude that, for purposes of our permanent discontinuance rule, the term "service" includes service provided exclusively or incidentally to roamers even though such roamers are not subscribers of the licensee providing roaming service. Including roaming within the definition of service serves the underlying goal of our rules to ensure that licensees are actively using their spectrum—be it to provide service to subscribers or roamers—and not allowing it to lie fallow. As Blooston notes, some licensees implement business plans that rely solely on providing service to roamers.<sup>173</sup> We clarify, however, that a WRS licensee must actually be providing service to a roamer and not merely have the ability to provide service to roamers.

72. *Channel keepers.* We adopt our proposed rule that operation of so-called channel keepers—devices that transmit test signals, tones, and/or color bars, for example—will not constitute operation or service for the purposes of our permanent discontinuance rule.<sup>174</sup> As the Commission

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<sup>167</sup> Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (filed Apr. 1, 2016); CCA June 3, 2016 *Ex Parte* at 4.

<sup>168</sup> See 47 CFR § 1.925. We see no need to clarify that the Commission retains the authority to grant an extension filed less than 30 days prior to the end of the 180-day discontinuance period, as requested by MetroPCS. MetroPCS Comments at 9. We may employ our existing waiver authority at any time.

<sup>169</sup> Blooston Comments at 26; CommNet Comments at 3-4; Verizon Comments at 15.

<sup>170</sup> Blooston Comments at 26.

<sup>171</sup> Verizon Comments at 15.

<sup>172</sup> CommNet Comments at 3-4.

<sup>173</sup> Blooston Comments at 26.

<sup>174</sup> See Appendix A, § 1.953(d). See also *Application of San Diego MDS Company*, Memorandum Opinion and Order, 19 FCC Rcd 23120, 23124, para. 10 (2004) ("in order to provide a service a provider would, at a minimum, need a customer or other person to serve") (*San Diego MDS*); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules To Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands et al.*, WT Docket Nos. 03-66, 03-67, 02-68, 00-230; MM Docket No. 97-217; IB Docket No. 02-364; ET Docket No. 00-258; Order on Reconsideration and Fifth Memorandum Opinion and Order, 21 FCC Rcd 5606, 5731, para. 310 (2006) (*BRS/EBS 3rd MO&O*) (favorably citing *San Diego MDS* when affirming that "transmission of test signals and/or color bars by a BRS/EBS licensee or

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explained in *San Diego MDS*, “it was clearly unreasonable . . . to believe that the periodic broadcasting of signals that nobody received constituted ‘service’ within the meaning of the rule. Such an interpretation is unreasonable; in order to provide a service a provider would, at a minimum, need a customer or other person to serve.”<sup>175</sup> The Commission further noted in that case that the underlying purpose of ensuring that spectrum is used efficiently and effectively, to prevent spectrum warehousing, would be frustrated if an MDS licensee’s transmission of test signals or color bars constituted authorized service.<sup>176</sup> The same rationale applies equally here. We thus adopt our rule regarding channel keepers as proposed.

73. Verizon asks the Commission to expand the definition of operation to include facilities that are “available” to carry customer traffic but are in “standby” mode and only used on an “as-needed” basis depending on capacity demands.”<sup>177</sup> Verizon argues that these systems are needed to allow licensees to maximize efficiency of their spectrum resources and network investment and maintain optimal performance levels while providing seamless service to customers across multiple licenses in the same market.<sup>178</sup> We decline to expand our definition of operation as requested by Verizon. As the Commission explained in *San Diego MDS*, at a minimum, provision of service requires a customer or other person to serve.<sup>179</sup> That a network is capable of service in “standby mode” or on an “as-needed basis” without providing actual service to a customer or other person is insufficient to constitute service for purposes of our permanent discontinuance rules. Moreover, the Commission does not license spectrum on a network basis; rather, we evaluate operational obligations on a license-by-license basis,<sup>180</sup> and thus licensees must maintain continuity of service or operations on a license-by-license basis.

### C. Geographic Partitioning and Spectrum Disaggregation Rules and Policies

74. In the *WRS Reform NPRM*, the Commission proposed a new rule, Section 1.950, to standardize and clarify its partitioning and disaggregation rules across services in which such activities are permitted.<sup>181</sup> As part of this proposal, the Commission contemplated establishing consistent performance obligations (i.e., construction and operation) for spectrum licenses that have been divided by geographic partitioning or spectrum disaggregation arrangements. Specifically, the Commission proposed that each party to such an arrangement would be individually required to meet any service-specific performance requirements.

75. At present, there are a wide variety of Wireless Radio Services under the Commission’s authority that are subject to equally varied construction and performance obligations. The Commission’s current partitioning rules provide licensees several options to meet their construction obligations: (1) *Independent Construction*—the parties may independently elect to satisfy the construction requirements for their respective partitioned license areas and failure to perform subjects a licensee in this

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 lessee does not constitute substantial service”); *H Block Report and Order*, 28 FCC Rcd at 9571, para. 233; *AWS-4 Report and Order*, 27 FCC Rcd at 16203, paras. 274-76. See also Verizon Comments at 16 (channel keepers that simply transmit test signals, tones, and/or color bars should not constitute operation because these transmissions “do not provide any service at any time to any customer”).

<sup>175</sup> *San Diego MDS*, 19 FCC Rcd at 23124, para. 10.

<sup>176</sup> *Id.*

<sup>177</sup> Verizon Comments at 16.

<sup>178</sup> *Id.*

<sup>179</sup> *San Diego MDS*, 19 FCC Rcd at 23124, para. 10.

<sup>180</sup> See *Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules*, Memorandum Opinion and Order, 24 FCC Rcd 8537, 8542, para. 14 (WTB 2009), *Cingular Interactive, L.P.; Showing of Substantial Service Pursuant to Section 90.665(c)*, Order, 16 FCC Rcd 19200, 19203, para. 7 (WTB 2001).

<sup>181</sup> *WRS Reform NPRM*, 25 FCC Rcd at - Appx. A, § 1.950.

context to forfeiture of its partitioned license;<sup>182</sup> (2) *Collective Construction*—the parties may collectively share responsibility for meeting the construction requirement for the entire geographic area and if the parties collectively fail, then both will be subject to a range of penalties, including possible license forfeiture;<sup>183</sup> or (3) *Partitioner-only Construction*—the partitioner may satisfy the construction requirement for the entire pre-partitioned geographic area. Many services allow this third option, but the repercussions for failure to perform vary significantly.<sup>184</sup> In some instances, partitionees must still satisfy a substantial service requirement for the partitioned area at renewal.<sup>185</sup> In others, partitionees can argue that they are not obligated to provide service to obtain license renewal since only the non-performing partitioner is subject to forfeiture of its license at renewal.<sup>186</sup>

76. Licensees also currently have multiple options under the Commission’s disaggregation rules to meet applicable construction obligations: (1) *One-party Construction*—parties can assign responsibility to either the disaggregator or the disaggregatee, and construction by that party is deemed sufficient for both.<sup>187</sup> Generally, if the designated party fails to perform, only its license is subject to forfeiture at renewal.<sup>188</sup> (2) *Shared Construction Responsibility*—parties may share responsibility for meeting the construction requirements.<sup>189</sup> Depending on the service, failure to perform by either party could result in forfeiture of both licenses.<sup>190</sup> By contrast, some service rules allow parties to a disaggregation to satisfy the construction requirement in the aggregate rather than individually.<sup>191</sup>

77. A majority of the commenters that addressed the partitioning and disaggregation construction requirements in the *WRS Reform NPRM* disagree with the Commission’s proposal to require that each party to such arrangements independently satisfy construction obligations.<sup>192</sup> They object largely on the basis that the current rules already promote efficient spectrum use and changing them is unnecessary, or worse, harmful.<sup>193</sup> They contend, among other things, that the new rules will curb interest

<sup>182</sup> *Id.* at 7026, para. 79.

<sup>183</sup> *Id.* at 7026, paras. 80-81.

<sup>184</sup> *Id.* at 7026-27, paras. 82-85.

<sup>185</sup> *See, e.g.*, 47 CFR § 24.714(e)(1)(ii) (Broadband PCS).

<sup>186</sup> *See* 47 CFR §§ 22.513(f)(1)(ii) (Paging and Radiotelephone Service), 90.813(e)(1)(ii) (900 SMR MHz Service); *see also* 47 CFR §§ 27.15(d)(1)(i) (governing 1.4 GHz, 1.6 GHz, and 2.3 GHz bands), 80.60(d)(1) (Maritime Radio Services), 101.1323(c)(2) (Multiple Address Systems (EAs)).

<sup>187</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7027-28, para. 87.

<sup>188</sup> *See, e.g.*, 47 CFR §§ 27.15(d)(2)(i) (most Part 27 services), 90.813(e)(2) (900 MHz SMR Service), 95.823(d)(2) (218-219 MHz Service), 101.1323(c)(1) (MAS rule), 90.1019(d)(2) (220 MHz Service).

<sup>189</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7028-29, paras. 78-90.

<sup>190</sup> *See, e.g.*, 47 CFR § 90.1019(d)(2) (220-222 MHz Service).

<sup>191</sup> *See, e.g.*, 47 CFR §§ 24.104(g)(1)(ii), (g)(4) (Narrowband PCS); 24.103(a) (Paging and Radiotelephone Service).

<sup>192</sup> None of the commenters addressed any other provision in proposed section 1.950 beyond the proposed performance requirements in subsection (g).

<sup>193</sup> *E.g.*, MetroPCS Comments at 31; Verizon Comments at 17; AT&T Comments at 2, 32; USCC Comments at 12.

in secondary market opportunities,<sup>194</sup> particularly in rural areas,<sup>195</sup> and will disrupt existing private contractual relationships.<sup>196</sup>

78. The Commission's experience with partitioning and disaggregation indicates that parties can, and sometimes do, manipulate the current requirements in ways that result in spectrum in some services lying fallow for long periods of time,<sup>197</sup> contrary to the Commission's stated goal of maximizing efficient spectrum use. For instance, under our current rules, parties have been free to disaggregate a small sliver of a spectrum license over the entire geographic licensed area and assign the entire construction requirement to that particular license. In that circumstance, only that small sliver of spectrum has been subject to license termination or forfeiture, while the bulk of the license has not been subject to any construction requirement.<sup>198</sup> We find that none of the comments effectively addresses the Commission's central rationale for proposing to modify the partitioning and disaggregation performance requirements, i.e., preventing spectrum warehousing. We therefore amend our partitioning and disaggregation rules to prevent spectrum warehousing.

79. We are also mindful, however, of the concerns expressed by industry commenters that Section 1.950(g), as proposed, could unnecessarily deter secondary market activity or create more extensive construction obligations for licensees than would have been required had the partitioning or disaggregation not taken place. Therefore, in lieu of requiring each party to a partitioning or disaggregation arrangement to certify that it will independently satisfy service-specific construction and/or performance requirements, we will afford such parties the additional option of sharing service-specific performance requirements.<sup>199</sup> Further, to ensure uniformity and clarity, we are adopting Section 1.950, largely as proposed, and Section 1.950(g), as revised herein, to replace separate partitioning and disaggregation construction and performance rules for each service in various rule parts. We conclude that these changes will provide WRS licensees with greater flexibility to configure their licenses according to their operational needs, while still affording important safeguards against spectrum warehousing.

80. Upon review, we agree with Verizon that imposing an independent construction requirement on both parties to a partitioning or disaggregation arrangement, as proposed in draft Section

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<sup>194</sup> *E.g.*, CTIA Comments at 33; CTIA 2017 Comments at 7; USCC Reply Comments at 8; RCA Reply Comments at 4-5; AT&T Comments at 31-34; Blooston Comments at 28; Blooston Reply Comments at 16; MetroPCS Comments at 31-32.

<sup>195</sup> *E.g.*, CTIA Comments at 33; CTIA 2017 Comments at 7; Verizon 2017 Comments at 8; RCA Reply Comments at 4-5; Blooston Comments at 28; NTCA Reply Comments at 5; USCC Reply Comments at 8.

<sup>196</sup> AT&T Comments at 32.

<sup>197</sup> For example, in a case that came before the Commission on an application for extension of time to meet a buildout requirement, a licensee holding hundreds of MAS licenses had previously disaggregated a small piece of each license and assigned the buildout requirement to a third-party licensee. The assignee failed to meet the first buildout requirement for all of its disaggregated licenses, and as a result, the Commission cancelled its licenses for failure to perform and denied its requests for additional time. However, the original licensee, by disaggregating its licenses and assigning away the buildout obligation, was able to delay construction for the balance of the license term, despite the fact that it still held a substantial majority of the spectrum. In doing so, it successfully avoided forfeiture.

<sup>198</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7023, para. 72.

<sup>199</sup> Specifically, in section 1.950(g), as revised herein, we provide the parties to a partitioning and/or disaggregation arrangement with two options for satisfying service-specific performance requirements (i.e., construction and operation requirements). Under the first option, each party may individually satisfy any service-specific requirements and, upon failure, must individually face any service-specific performance penalties. Under the second option, both parties may agree to share responsibility for any service-specific requirements. Upon failure to meet their shared service-specific performance requirements, both parties will be subject to any service-specific penalties.

1.950(g) in the *WRS Reform NPRM*, might, under certain circumstances, unnecessarily impose additional construction requirements on parties to partitioning and disaggregation arrangements that would not have existed had the license not been partitioned or disaggregated.<sup>200</sup> To address this potential issue, we have revised Section 1.950(g) to allow participants to share the construction requirement, which ensures that no two parties to a partitioning or disaggregation arrangement will be required to build out more than 100 percent of the requirement for any particular geographic area or spectrum block. Furthermore, the rule we adopt today does not require that parties to partitioning and disaggregation arrangements continue construction in cases where the original licensee has already satisfied the requirement for the license term. However, to the extent that Section 1.950(g), as revised, requires that partitionees and disaggregatees comply with interim and final construction benchmarks in addition to satisfying the renewal requirements we adopt in this order, the Commission's interest in preventing spectrum warehousing that is permitted under current rules outweighs the potential added burden, if any, on these third-party licensees.

81. We find that the rule we adopt today adequately addresses arguments by CTIA and several other commenters that proposed Section 1.950(g) would deter secondary market activity, especially with respect to small, rural licensees for whom buildout requirements may be prohibitively costly.<sup>201</sup> We also find that today's rule adequately addresses Blooston's arguments underlying its recommendation that we exempt rural areas from the rule.<sup>202</sup> The revised rule we adopt today allows parties to partitioning and disaggregation arrangements to share service-specific construction requirements. We conclude that the additional flexibility of our revised rule will continue to enable service providers to configure geographic area and spectrum block licenses to suit their unique operational needs, which includes using partitioning and disaggregation to open up licensing opportunities to rural carriers. However, it contravenes the Commission's obligation to promote efficient use of spectrum to allow arrangements that facilitate spectrum warehousing solely because the acquiring entities lack the resources to develop that spectrum. Although we hope that the secondary markets provide an opportunity for small, rural carriers to obtain access to spectrum in an amount, or over a geographic area, that is consistent with their business plans, we are still obligated to ensure that spectrum is put to use and not allowed to lie fallow, whatever the reason.

82. We also are unpersuaded by Blooston's and NTCA's recommendations that the Commission retain "partitioner only" construction rules (wherein a partitioner can certify that it has met or will meet the construction requirement for the entire pre-partitioned area) to encourage carriers to take risks in rural markets.<sup>203</sup> This proposal would appear to allow a partitionee in certain services to hold a license for the partitioned area without deploying facilities on the spectrum for a significant period of time, even if the licensee must be able to certify that it is providing service at renewal, or otherwise make a showing to justify license renewal. We conclude that the better way to promote service to rural markets is to ensure that all license holders—at least during the initial license term, and in circumstances where the original licensee has not previously satisfied the construction requirement for the entire geographic area or spectrum block—have, directly or indirectly, an obligation to construct and operate facilities on the spectrum. Adopting Section 1.950(g), as revised herein, is an essential tool to help us ensure that all covered licensees are discouraged from warehousing spectrum and instead are putting the spectrum to use.

83. We decline to adopt CTIA's proposal that we should exempt a licensee's wholly-owned subsidiaries or commonly controlled affiliates when they partner with the licensee to divide the license.<sup>204</sup>

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<sup>200</sup> Verizon Comments at 16-17.

<sup>201</sup> CTIA Comments at 33; Blooston Reply Comments at 16; NTCA Comments at 3; RCA Reply Comments at 5; AT&T Comments at 32-33.

<sup>202</sup> Blooston Comments at 28; Blooston Reply Comments at 15-17.

<sup>203</sup> Blooston Comments at 28; Blooston Reply Comments at 15-17; NTCA Reply Comments at 4-5.

<sup>204</sup> CTIA Comments at 35.

Our experience has shown that this type of intra-corporate family partitioning and disaggregation has proven particularly susceptible to manipulation for spectrum warehousing purposes simply because the parties to the division are commonly controlled.<sup>205</sup> Adoption of CTIA's proposal risks undermining rather than advancing the Commission's objective of eliminating spectrum warehousing. Moreover, the addition of the new option to permit shared construction responsibility by a partitioner/partitionee or a disaggregator/disaggragatee should largely address this concern.

84. We do not adopt the suggestions raised by MetroPCS<sup>206</sup> and Verizon<sup>207</sup> that we exempt Broadband PCS from our proposed rule based on the argument that the substantial service requirement at renewal discourages parties to a partitioning arrangement from warehousing spectrum in the manner the Commission seeks to preclude.<sup>208</sup> We conclude that these licensees will be no worse off under a regulatory framework that holds all licensees to comparable requirements. Many services still allow parties to a partitioning or disaggregation arrangement to assign the performance requirement to one of the parties and thereby allow the other to delay or avoid construction in that party's portion of the license (whether geography or spectrum) if they so choose. This problem exists in numerous services, even if some service rules may discourage so-called free riders.<sup>209</sup> By this Second Report and Order, we seek to consolidate the services under a single set of rules and proscribe spectrum warehousing by all licensees in the covered services, not just the few who hold spectrum subject to service rules that more effectively prevent such warehousing.

85. We also decline to adopt CTIA's proposal that the Commission narrowly focus its independent construction requirement in a manner that would only target free rider behavior. Specifically, CTIA suggests that the Commission prohibit parties from assuming construction and performance obligations for an entire license area or spectrum block unless they also hold spectrum covering a majority of that same geographic area or spectrum block.<sup>210</sup> CTIA does not provide evidence demonstrating why this approach would be more effective at preventing spectrum warehousing than the

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<sup>205</sup> In one such case, a single licensee and its affiliated company disaggregated large portions of nearly 400 of their 220 MHz service licenses and assigned the majority shares of these licenses to several other affiliated companies. For each of the subject licenses, the original licensees retained only a fraction (generally 20 percent or less) of the original licensed spectrum, and in each case, the original licensees indicated that they (the assignors) would be responsible for meeting Part 90 construction deadlines. As a result, the third-party recipients of these disaggregated licenses received 80 percent of the spectrum without a corresponding construction obligation.

<sup>206</sup> MetroPCS Comments at 31.

<sup>207</sup> Verizon Comments at 17.

<sup>208</sup> See 47 CFR § 24.714(e)(1)(i-v). Under this provision, either the partitionee certifies that it will satisfy the construction requirement or the original licensee will retain responsibility for the construction requirement for the entire area. In the latter context, the partitionee must still certify that it has satisfied the substantial service requirement for the partitioned area by the end of the 10-year license period. *Id.* However, Broadband PCS licensees that seek authority to disaggregate their spectrum license can elect which of the two parties will be responsible for construction, allowing one or the other party to delay or avoid construction in that party's portion of the spectrum. See 47 CFR § 24.714(e)(2).

<sup>209</sup> We note that the current rules for several services (e.g., 1.6 GHz, 1.4 GHz, and WCS – 2305-2320, 2345-2360 or 2.3 GHz bands) provide the option that each party to a partitioning arrangement may certify that it will independently satisfy the substantial service requirement for its partitioned area, and if it fails, face cancellation. See 47 CFR § 27.15(d)(1)(i). But these same service rules allow partitioners to accept full responsibility for the entire area, absolving the partitionee from any repercussions for failure, and they allow parties to a disaggregation arrangement to choose which of the two parties will be responsible for the substantial service requirement, again exposing only the responsible party to potential forfeiture. See *id.* § 27.15(d)(2)(i). As the Commission suggested in the *WRS Reform NPRM*, partitionees in these bands could argue that under section 27.15(d), they are not obligated to provide service to obtain license renewal. *WRS Reform NPRM*, 25 FCC Rcd at 7027, para. 84.

<sup>210</sup> CTIA Comments at 34 & n.108.

consistent approach envisioned by the partitioning and disaggregation rules adopted today, nor does it acknowledge or address the potential administrative burdens that would be placed on applicants and on Commission staff in addressing such arrangements. We believe that adoption of CTIA's proposal would provide greater uncertainty in the spectrum marketplace and would not consistently and successfully prevent spectrum warehousing.

86. We do adopt the suggestions advanced by AT&T,<sup>211</sup> Sprint,<sup>212</sup> Verizon,<sup>213</sup> and CTIA<sup>214</sup> that we should exempt existing partitioning and disaggregation arrangements from application of the requirements of Section 1.950(g) as adopted today, and apply the rule only prospectively and only to future partitioning and disaggregation arrangements. By adopting Section 1.950(g) as revised, we intend to prevent spectrum warehousing and ensure that future transactions facilitate the availability of spectrum in the marketplace for licensees who are most highly motivated to use it. By this action, we seek to resolve loopholes in our current partitioning and disaggregation rules that could be and have been manipulated to avoid the very construction and substantial service obligations that promote efficient spectrum use. However, we agree that our rules should not be applied retroactively to disrupt transactions that have already been negotiated based on the pre-existing rules and submitted to the Commission for approval. Specifically, Section 1.950(g) will be applied to partitioning and disaggregation arrangements reflected in applications filed on or after the effective date of the new rule, and not to any arrangements reflected in an already granted application or in an application filed before the effective date of new Section 1.950(g).

87. We make no changes in response to AT&T's argument that new entrants will be discouraged from acquiring spectrum through partitioning or disaggregation when it is late in the original license term, and there is little time to fulfill the construction obligation.<sup>215</sup> We conclude that this concern is related not to partitioning and disaggregation rules, but to the Commission's current build out rules, which provide that the performance requirements associated with a license are not reduced or extended as a result of any secondary market transaction, including one near the end of a license term. Today's rule modifications do not alter those obligations.

88. Finally, we do not address the suggestion by Sprint and AT&T that licensees that have acquired previously partitioned and/or disaggregated licenses be allowed, as a matter of processing, to consolidate the subdivided parts into the original license configuration.<sup>216</sup> We find this proposal to be beyond the scope of this proceeding, which is narrowly focused on standardizing and clarifying the Commission's partitioning and disaggregation rules across services. The question of whether, and how, a partitioned or disaggregated license can be reconstituted as a matter of processing can be addressed by Commission staff under current rules and licensing systems.

89. Commenting parties in this proceeding that addressed proposed Section 1.950 focused solely on proposed Section 1.950(g). Accordingly, based on the record in this proceeding, we adopt section 1.950 largely as proposed in the *WRS Reform NPRM*, with the exception of Section 1.950(g). We further conclude that adopting new Section 1.950(g), as revised herein, will most effectively balance our competing obligations to: (1) remove potential barriers to entry by returning heretofore fallow spectrum to the marketplace, and thereby increase competition; (2) encourage parties to use spectrum more efficiently; and (3) speed service to unserved and underserved areas.

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<sup>211</sup> AT&T Comments at 32.

<sup>212</sup> Sprint Comments at 19.

<sup>213</sup> Verizon Comments at 17-18.

<sup>214</sup> CTIA Comments at 34-35.

<sup>215</sup> AT&T Comments at 33.

<sup>216</sup> Sprint Comments at 19-20; AT&T Reply Comments at 12.

#### D. Freeze on the Filing of Competing Renewal Applications and Resolution of Previously Pending Competing Renewal Applications

90. In the *WRS Reform Order*, the Commission imposed a freeze on the filing of competing renewal applications and held in abeyance the already-filed competing renewal applications until the conclusion of this proceeding. The Commission stated that, if it were to adopt the rules proposed in the *WRS Reform NPRM*, it would “dismiss all pending mutually exclusive applications and related correspondence filed with the Commission regarding those applications.”<sup>217</sup>

91. At the time that the *WRS Reform Order* was adopted, the Commission had before it a total of 151 renewal applications in three different service bands, and 178 applications competing with those renewal applications.<sup>218</sup> Most of those competing applications—175 of 178—were filed in the 2.3 GHz Band against WCS licensees. These competing applications were dismissed by the Commission after the relevant parties reached settlement agreements.<sup>219</sup> Of the remaining three competing applications, two were against Cellular licensees’ renewal applications and one was against a Broadband PCS licensee’s renewal application.<sup>220</sup> The two Cellular competing applications have since been dismissed<sup>221</sup> or resolved.<sup>222</sup> The PCS competing application was withdrawn after the applicant obtained the underlying license at issue via the license assignment process.<sup>223</sup>

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<sup>217</sup> *WRS Reform Order*, 25 RCC Rcd at 7033-34, para. 100.

<sup>218</sup> *Id.* at 7033, para. 100.

<sup>219</sup> The vast majority of the competing WCS renewal applications were resolved by an agreement between Green Flag Wireless, LLC (Green Flag); CWC License Holding, Inc.; Corr Investments I, LLC; James McCotter; and Snapline Communications, LLC (the Competing Applicants), and AT&T and its subsidiaries (2012 Settlement Agreement). The Commission approved the 2012 Settlement Agreement and its amendments and dismissed the respective competing renewal applications throughout 2012-2014. *See Wireless Telecommunications Bureau Approves Settlement Agreement and Dismisses Competing Renewal Applications*, WT Docket 10-112, Public Notice, 27 FCC Rcd 12940 (WTB 2012); *Wireless Telecommunications Bureau Dismisses Competing Applications*, WT Docket 10-112, Public Notice, 28 FCC Rcd 4332 (WTB 2013) (2013 Dismissal Notice); *Wireless Telecommunications Bureau Dismisses Competing Application*, WT Docket 10-112, Public Notice, 29 FCC Rcd 3760 (WTB 2014); *Wireless Telecommunications Bureau Approves Amendment to Settlement Agreement, Dismissal of Competing Applications, and Withdrawal of Petitions for Reconsideration*, WT Docket No. 10-112, Public Notice, 29 FCC Rcd 16309 (WTB 2014). The Commission also in 2013 approved a settlement agreement between Green Flag and Stratos Offshore Services Company (Stratos) for dismissal of competing applications against four Stratos WCS authorizations in the Gulf of Mexico. *See* 2013 Dismissal Notice at 3. Today, there are no remaining competing WCS renewal applications.

<sup>220</sup> *WRS Reform Order*, 25 FCC Rcd at 7034-35, paras. 103-05.

<sup>221</sup> *See Wireless Telecommunications Bureau Approves Settlement Agreement*, Public Notice, WT Docket No. 10-112, 28 FCC Rcd 7907 (WTB 2013) (approving the settlement agreement that resolved N.E. Colorado Cellular Inc.’s competing application for a Cellular Service authorization held by Sagir, Inc., and dismissing the competing application).

<sup>222</sup> Tisdale Telephone Company’s (Tisdale) competing application against the Cellular renewal application of Kankakee Cellular LLC (Kankakee), ULS File No. 0003848206, was granted on April 24, 2013, after Kankakee withdrew its renewal application for a Cellular license authorization in the Kankakee, Illinois market. *See Wireless Telecommunications Bureau Site-by-Site Action*, Public Notice, Report No. 8649, at 16 (May 1, 2013), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-320623A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-320623A1.pdf) (granting Tisdale’s amended application); *see also* ULS File No. 0003637485 (withdrawal of Kankakee’s renewal application).

<sup>223</sup> NTCH-CA, Inc. (NTCH-CA) filed in 2007 a competing application against incumbent licensee FB Communications, Inc. (FB Communications). *See* ULS File No. 0003030420. The license was eventually assigned to NTCH-CA, and NTCH-CA has since assigned the license to T-Mobile. *See* ULS File No. 0004411757 (*pro forma* assignment from FB Communications to Besimanto Communications Corp. (Besimanto)); ULS File No. 0005032516 (assignment from Besimanto to NTCH-CA); ULS File No. 0005834009 (lead application for exchange

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92. Because there are no remaining pending competing renewal applications, there is no further action needed on the Commission's part to dismiss such applications.

**E. Transition From Interim Renewal Application Procedures**

93. The Commission directed incumbent licensees to continue to file timely renewal applications as required by applicable Commission rules during the pendency of this rulemaking.<sup>224</sup> The Commission further directed that renewal applications routinely should continue to be placed on a Bureau accepted for filing public notice, and that interested parties could continue to file petitions to deny consistent with our rules.<sup>225</sup> In order to reduce uncertainty that might be caused by long-pending renewal applications, the Commission directed the Bureau to routinely grant renewal applications during the pendency of this proceeding, conditioned on the outcome of this rulemaking.<sup>226</sup>

94. Notwithstanding the Commission's statement in the *WRS Reform Order* that interested parties may file petitions to deny consistent with the requirements of our rules, NTCH, Inc., now asks that we provide an opportunity for a potential applicant to challenge a renewal applicant's basic qualifications at the close of this docket.<sup>227</sup> NTCH asserts that providing this opportunity to file petitions to deny against conditionally granted renewal applications is necessary to avoid "permanently abrogat[ing] the legal rights of parties interested in challenging the grant of a renewal application."<sup>228</sup> We deny NTCH's request that we open a window for the filing of petitions to deny against licensees whose renewal applications have been conditionally granted. The opportunity to file petitions to deny against renewal applications has been present throughout the pendency of this proceeding, and NTCH has not offered a persuasive legal or equitable argument in support of having a second shot at these renewal applications. We accordingly decline to open a window for the filing of petitions to deny against renewal applications that have been conditionally granted.

95. Petitions for reconsideration of the actions taken by the *WRS Reform Order* were filed by: (1) Atlantic Tele-Network, Inc., in connection with its wholly owned indirect subsidiary's, Tisdale Telephone Company, LLC, competing Cellular application with the Cellular renewal application filed by Kankakee Cellular L.L.C.;<sup>229</sup> (2) CTIA, AT&T, Cricket, Rural Cellular Association, Sprint, T-Mobile, US Cellular, and Verizon Wireless;<sup>230</sup> (3) Green Flag Wireless, LLC, CWC Licensing Holding, Inc., James

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of licenses, including assignment of license at issue from NTCH-CA to T-Mobile License LLC). In light of these events, NTCH-CA withdrew its competing application. See ULS File No. 0003030420.

<sup>224</sup> *WRS Reform Order*, 25 FCC Rcd at 7039, para. 112.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> NTCH 2017 Comments at 6.

<sup>228</sup> *Id.*

<sup>229</sup> Atlantic Tele-Network, Inc., and Tisdale Telephone Company, LLC, Petition for Partial Reconsideration and/or Clarification of Order Regarding the Processing of Pending, Cut-Off Cellular Applications, WT Docket No. 10-112 (filed June 24, 2010); Supplement to Petition for Partial Reconsideration and/or Clarification of Order Regarding the Processing of Pending, Cut-Off Cellular Applications, WT Docket No. 10-112 (filed July 27, 2010).

<sup>230</sup> Petition for Reconsideration of CTIA – The Wireless Association®, AT&T Services, Inc., Cricket Communications, Inc., Rural Cellular Association, Sprint Nextel Corporation, T-Mobile USA, United States Cellular Corporation and Verizon Wireless, WT Docket No. 10-112 (filed Aug. 6, 2010) (CTIA Petition).

McCotter, and NTCH-CA, Inc.,<sup>231</sup> and (4) Wireless Communications Association International, Inc. (WCAI).<sup>232</sup>

96. The Atlantic Tele-Network, Inc. petition has been mooted by the fact that Kankakee withdrew its renewal application for a Cellular license authorization in the Kankakee, Illinois market, and Tisdale was granted a Cellular license for that market.<sup>233</sup> The Commission previously approved the withdrawal of the petition for reconsideration filed by Green Flag Wireless, LLC, CWC License Holding, Inc., James McCotter, and NTCH-CA, Inc., along with another petition for reconsideration filed by the same parties on October 22, 2010, pursuant to a settlement agreement.<sup>234</sup> The WCAI petition for partial reconsideration was addressed by a public notice issued by the Bureau to clarify the conditional grant of applications for renewal of license in the *WRS Reform Order*.<sup>235</sup> Subsequent to the release of the *WRS Reform Clarification Public Notice*, CTIA, AT&T, Cricket, Rural Cellular Association, Sprint, T-Mobile, US Cellular, and Verizon Wireless filed a motion to withdraw their petition for reconsideration.<sup>236</sup> We find no reason to address the arguments in the CTIA Petition and accordingly will grant the request to withdraw the CTIA Petition.

97. We direct the Bureau to take the necessary steps to cease conditioning the grant of renewal applications on the outcome of this proceeding. In addition, we direct the Bureau to take the necessary steps to remove the condition from already granted renewal applications or otherwise make clear on the face of such licenses that such condition is no longer valid.

### III. FURTHER NOTICE OF PROPOSED RULEMAKING

98. The Act directs the Commission to promote “the development and rapid deployment of new technologies, products, and services . . . for those residing in rural areas.”<sup>237</sup> Further, the Act requires that service rules for geographic licenses subject to auction “include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment and rapid deployment of new technologies and services.”<sup>238</sup> A core Commission goal is to facilitate access to scarce spectrum resources and ensure that wireless communications networks are widely deployed so that every American, regardless of location, can benefit from a variety of communications offerings made available by Commission licensees.<sup>239</sup> In pursuit of that goal, the

<sup>231</sup> Green Flag Wireless, LLC, CWC License Holding, Inc., James McCotter, and NTCH-CA, Inc., Petition for Reconsideration, WT Docket No. 10-112 (filed Aug. 6, 2010).

<sup>232</sup> Wireless Communications Association International, Inc. Petition for Partial Reconsideration, WT Docket No. 10-112 (filed Aug. 6, 2010).

<sup>233</sup> Tisdale Telephone Company, LLC, License for WQRD957, CMA273 – Kankakee, IL, granted Apr, 24, 22013

<sup>234</sup> *Wireless Telecommunications Bureau Approves Amendment to Settlement Agreement, Dismissal of Competing Applications, and Withdrawal of Petitions for Reconsideration*, WT Docket No. 10-112, Public Notice, 29 FCC Rcd 16309 (WTB 2014).

<sup>235</sup> *Federal Communications Commission Clarifies Conditional Grant of Renewal Licenses Pursuant to the Wireless Radio Services Order*, WT Docket No. 10-112, Public Notice, 26 FCC Rcd 4173 (2011) (*WRS Reform Clarification Public Notice*).

<sup>236</sup> Motion of CTIA – The Wireless Association®, AT&T Services, Inc., Cricket Communications, Inc., Rural Cellular Association, Sprint Nextel Corporation, T-Mobile USA, United States Cellular Corporation and Verizon Wireless To Withdraw Petition for Reconsideration, WT Docket No. 10-112 (filed May 31, 2011).

<sup>237</sup> 47 U.S.C. § 309(j)(3)(A).

<sup>238</sup> *Id.* § 309(j)(4)(B).

<sup>239</sup> See 47 U.S.C. §§ 151 (creating the FCC “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at

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Commission has, through various service rulemakings, created flexible-use geographic licenses and established initial term construction obligations tailored to specific bands, many of which were adopted with the stated intent of promoting service in rural areas.<sup>240</sup>

99. Although the Commission's efforts have facilitated the rapid development of a wide variety of wireless services over the past decade, there remains a real and growing digital divide between rural and urban areas in the United States.<sup>241</sup> While the construction obligations associated with geographic licenses are intended to encourage wide deployment of wireless networks, those obligations require licensees to provide service to only portions of the license area, not the entire area. Even the Commission's most aggressive initial term construction obligation, which requires certain licensees to provide signal coverage and offer service over 70 percent of the geographic area of the license,<sup>242</sup> likely leaves significant portions of rural America, where deployment costs may be higher and demand lower, without meaningful mobile coverage. In addition, the Commission's current rules do not require any additional construction after the initial license term—that is, during subsequent renewal terms. In this Further Notice, we take the opportunity to take a fresh look at construction obligations during license renewal terms, and seek comment on a range of possible actions that may advance our goal of increasing the number of rural Americans with access to wireless communications services.

#### A. Facilitating Additional Construction

100. In order to encourage investment in wireless networks, facilitate access to scarce spectrum resources, and promote the rapid deployment of mobile services to rural Americans, we seek comment on various steps the Commission could take to narrow existing gaps in the provision of wireless communications services and facilitate construction. We seek comment in particular on whether renewal term construction obligations beyond those applicable during a licensee's initial license term would help achieve our goal of increasing the number of Americans with access to wireless communications services. With respect to any potential renewal term construction obligations, we seek comment on three methods for applying those obligations: (1) applying any new obligations on a prospective basis only to new licenses issued in the future; (2) establishing an "opt-in" framework to facilitate additional buildout; or (3) applying any new obligations prospectively to all existing and future licensees of flexible geographic licenses. We seek comment on the specific costs and benefits of each approach and the likelihood that they will achieve the Commission's goals of closing the digital divide and facilitating deployment of mobile services across the United States.

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 reasonable charges . . ."), 254(b) (directing the Commission to adopt universal-service policies so that "[c]onsumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services, . . . that are reasonably comparable to those services provided in urban areas . . .").

<sup>240</sup> As an example, in 2004, the Commission established a rural safe harbor, whereby licensees in all wireless services licensed on a geographic basis could meet construction obligations by demonstrating substantial service through coverage of a certain percentage of geography in a percentage of rural areas within a licensed area. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services et al.*, WT Docket No. 02-382 et al., Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 19078, 19123-24 paras. 79-80 (2004) (*Rural R&O*). In 2007, the Commission, largely in an effort to expand the provision of rural service offerings, adopted geographic area coverage requirements in lieu of population coverage benchmarks in certain 700 MHz spectrum blocks. See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, WT Docket No. 06-150 et al., Second Report and Order, 22 FCC Rcd 15289, 15349-50, paras. 158-59 (2007) (*700 MHz Second Report and Order*).

<sup>241</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and the Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 700-02, paras. 1-6 (2016).

<sup>242</sup> See 47 CFR § 27.14(g).

101. First, we seek comment on applying any of the additional renewal term construction obligations discussed below on a prospective basis only to new geographic licenses issued in the future. Should any new obligations apply to all such licenses issued in the future, or should we apply any additional renewal term construction obligations only to licensees in bands authorized by the Commission in the future? If the latter, how should the Commission define bands subject to those construction obligations? Would they apply only to bands newly authorized for the provision of WRS services?

102. Another approach would be to provide licensees with the opportunity to voluntarily undertake additional renewal term construction obligations in exchange for certain incentives. What incentives would be sufficient for licensees to make long-term investments in additional construction, specifically in rural areas? If so, when should licensees be permitted to opt-in? At their next renewal term? During an existing license term?

103. Finally, we seek comment on whether we should apply any additional renewal term construction obligations prospectively to all existing and future flexible geographic licenses. In the event the Commission uses this approach, we seek comment on when during a renewal term any additional construction obligations would apply.

104. We seek comment on these potential approaches for achieving our objectives of increasing buildout during terms after a license's initial term, as well as any other reasonable deadlines for compliance, specifically in light of the various penalties for failure discussed below and our goal to promote rapid investment and deployment of wireless communications services to rural areas. We seek comment on the specific costs and benefits of each approach and any other considerations concerning the timeframe for implementation that should inform the Commission's decision. More generally, we seek comment on applying any such obligations only to the license renewal terms that begin after the effective date of those changes and any alternatives.

## **B. Renewal Term Construction Obligations**

105. In the event we adopt additional renewal term construction obligations beyond a licensee's initial term requirements – whether on the opt-in or mandatory basis described above – we seek comment on additional, reasonable construction obligations that will be most effective in achieving our goals. First, we seek comment on an additional renewal term construction obligation whereby the licensee would be required to exceed its original construction metric by an additional 10 percent in the next full renewal term, and then by increments of five or 10 percent in subsequent renewal terms, up to a certain threshold. For example, PCS licensees that are required to provide service to 67 percent of the license population in the initial license term would be required to provide service to 77 percent (an additional 10 percent) in their next full renewal term, then 82 or 87 percent (an additional five or 10 percent) in the subsequent term, and so on up to a certain threshold. We seek comment on the extent to which such a requirement would further our goal of expanding service, or could be met in many instances without significant additional deployment in rural areas. We seek comment on whether an increase of 10 percent during the next full renewal term, followed by incremental increases of five or 10 percent, is sufficient to “ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment and rapid deployment of new technologies and services.”<sup>243</sup> Should different increments apply to each type of license depending on the license's initial term construction obligations, which may vary widely?<sup>244</sup> Would a higher increment more effectively carry out congressional intent? Or would a higher increment deter the effective and efficient allocation of spectrum and unduly increase costs, potentially deterring needed infrastructure upgrades to ease existing congestion? Similarly, should the increments vary depending on the

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<sup>243</sup> 47 U.S.C. § 309(j)(4)(B).

<sup>244</sup> For example, certain PCS licensees are required to cover 25 percent of the license population, *see* 47 CFR § 24.203(b), while certain 700 MHz licensees are required to cover 75 percent of the license population, *see id.* § 27.14(g).

Commission's chosen approach for applying the additional obligations – i.e., depending on whether the obligations apply on an opt-in or mandatory basis? Further, at what threshold should buildout requirements stop? At 100 percent? At 95 percent? 90 percent? How do we balance the benefits of increased buildout to rural consumers against the cost incurred for such buildout? And how do we account for the increased incentive to make use of otherwise fallow spectrum that comes with increased buildout requirements? We also seek comment on how to treat cases in which a licensee may have met the increased benchmark during their initial license term.<sup>245</sup>

106. Similarly, for licensees that met a Commission-defined “safe harbor” (e.g., service to a certain percentage of the population) to satisfy a substantial service requirement, we seek comment on increasing the respective safe harbor metrics of those licenses by 10 percent in the next full renewal term, and then by increments of five or 10 percent in subsequent renewal terms. Also, some licensees can meet a safe harbor metric requiring construction of a discrete number of fixed links based on population – e.g., four links per million population. Increasing the number of links constructed would require adjusting the ratio to reduce the number of persons covered per link.<sup>246</sup> In certain small market populations, this may not actually require additional construction for many licensees, and may not be particularly effective at determining the portion of the market that remains unserved. We seek comment on what alternate means might be appropriate for adjusting the metric for this type of safe harbor. Additionally, some licensees subject to an initial term substantial service requirement may have provided a descriptive showing of their overall service or use<sup>247</sup> (rather than meeting a safe harbor metric). We seek comment on an appropriate means for increasing that level of service or use. For example, is there an additional renewal term construction obligation that could be applied to licensees with initial term substantial service requirements that would be analogous to a 10 percent initial increase, followed by incremental increases of five or 10 percent? We seek comment on whether the appropriate means of increasing the construction obligations for licensees that met a safe harbor or substantial service requirement should vary depending on the Commission's chosen method for applying those additional obligations. We seek comment on these and any other relevant considerations for applying an additional construction obligation to licensees who originally made a safe harbor or substantial service showing in their initial license term.

107. We also seek comment on other, targeted construction obligations that might achieve our goal of expanded coverage with respect to spectrum bands used to provide service to consumers. For example, should renewal term construction obligations contain a requirement for covering at least a specific percentage of the rural population?<sup>248</sup> We seek comment on the market forces that drive investment by wireless providers and on how these forces might inform our decision. Would a requirement that licensees provide coverage to a certain percentage of the rural population be likely to increase the number of wireless providers offering service in those areas and maximize service to rural populations? We also seek comment on whether a requirement to cover a certain percentage of the geographic area within a license area, instead of a specific percentage of the population, might be a more effective metric to guarantee service to rural areas. If so, we seek comment on the appropriate percentage

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<sup>245</sup> We note that certain licensees—e.g., Cellular licensees expanding into unserved area and licensees of 700 MHz unserved area acquired through relicensing—have the flexibility to file an application for the area they wish to serve and have a 100 percent geographic coverage requirement for that licensed area. See 47 CFR §§ 22.946, 27.14(j)(3). By virtue of their initial term 100 percent geographic coverage requirement, such licensees would already have satisfied any additional renewal term construction requirements on which we seek comment herein.

<sup>246</sup> If a service has a safe harbor of four links per million population (one link per 250,000 population), the ratio could be adjusted by, for example, requiring one link per 225,000 population.

<sup>247</sup> See *supra* para. 60, distinguishing between wireless providers that provide service to subscribers—e.g., providing service to at least one subscriber that is not affiliated with, controlled by, or related to, the provider—and licensees that use their spectrum for private, internal communications.

<sup>248</sup> The Commission defines “rural” as a county or census block with a population density of less than 100 people per square mile. See *Rural R&O*, 19 FCC Rcd at 19086-88, paras. 10-12.

of the geographic area that licensees should be required to cover, and whether a geographic-based requirement should vary depending on the size of the licensed area (e.g., CMA, PEA, EA, REAG). Alternatively, would requiring service covering a certain percentage of rural road miles be an effective metric of successful service to rural areas?<sup>249</sup> We seek comment on these and any other approaches that will achieve our goal of increasing the number of Americans with access to wireless communications services.

108. We also seek comment on when during a renewal term any additional construction obligations would apply. One approach would be to require licensees to meet the additional construction obligations at the end of the next full renewal license term. This method would provide licensees significant time to meet any new requirements, but would delay the benefits of additional construction and service, including service to rural areas. As an alternative, we seek comment on requiring licensees to satisfy at least some additional renewal term construction obligations by a certain number of years into their renewal term, e.g., five years into a ten-year renewal term. If commenters support this approach, we seek comment on the number of years that would provide the most immediate results while also giving licensees a sufficient amount of time to comply. We also seek comment on whether the deadlines for compliance with any additional construction obligations should vary depending on the size of the license area (e.g., CMA, EA, REAG).

109. We seek comment on these potential approaches, as well as any other reasonable deadlines for compliance, specifically in light of the various penalties for failure discussed below and our goal to promote rapid investment and deployment of wireless communications services to rural areas. We seek comment on these and any other considerations concerning the timeframe for implementation that will most effectively facilitate rapid deployment of wireless communications services to rural areas.

110. *Scope of Subject Licenses.* For several decades, the Commission has issued geographic licenses in a wide range of spectrum bands with service rules and technical limits tailored to make the most efficient use of each particular band. Some licenses, such as PCS, feature wide bandwidths and provide licensees the option to offer a variety of mobile and fixed services.<sup>250</sup> In other cases, licensees' service options are more limited due to such factors as: (1) the narrow bandwidths of the licenses (e.g., 220 MHz),<sup>251</sup> (2) protection that must be afforded others in the band (e.g., M-LMS),<sup>252</sup> and (3) service rules that dictate a particular set of use cases (e.g., 800 MHz Air-Ground).<sup>253</sup> In light of the wide variety of flexible geographic licenses and their potential uses, we seek comment on whether to apply any additional renewal term construction obligations—whether they are adopted through either an opt-in or mandatory approach—to all flexible geographic licenses, or whether certain types of licenses should be excluded. Similarly, we seek comment on whether any additional renewal term obligations should vary depending on the type of license, or the specific band, to which they would apply, and, if so, why those obligations should vary.

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<sup>249</sup> For example, in the sixteenth annual Mobile Wireless Competition Report, one of the metrics by which the Commission reported rural coverage was by “rural road” miles, as defined using the “Rural Road” category established by the U.S. Census Bureau. *See Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, 28 FCC Rcd 3700, 3941, para. 390, n.1186 (2013).

<sup>250</sup> Other bands include the 600 MHz, 700 MHz, and AWS bands.

<sup>251</sup> Other bands include the Narrowband PCS and Paging bands.

<sup>252</sup> *See, e.g.*, 47 CFR § 90.353 (limiting LMS licensees to operating on a secondary basis to federal and ISM users); *see also id.* § 22.503(i) (paging licensees must provide co-channel interference protection to all authorized co-channel facilities of exclusive licensees within the paging geographic area).

<sup>253</sup> *See, e.g., id.* § 22.857 (certain 800 MHz paired bands are designated for nationwide exclusive assignment to licensees providing services to persons on board aircraft); *see also id.* § 90.351 (operations in the LMS band are restricted to using non-voice radio techniques used to determine the location and status of mobile radio units).

111. Further, we note that licensees of flexible geographic licenses are free to use the spectrum in any manner consistent with the rules. Some licensees in the same band, for example, could choose to provide mobile or fixed services to consumers, provide fixed services to businesses, or use the license for private internal communications. In this vein, in the event the Commission adopts additional renewal term construction obligations through a mandatory approach applicable to either all licensees, or only new licensees, we seek comment on whether those obligations should apply to all types of uses within a band, or only particular types. We seek comment on these and any other considerations relevant to the scope of licenses subject to any additional renewal term construction obligations. Commenters should identify the costs and benefits of any particular approach they advocate.

112. *Reporting.* Finally, we seek comment on possible renewal reporting obligations that may help achieve our goal of closing the digital divide, particularly in rural areas. For instance, even if a licensee has deployed facilities to use a spectrum license, there may still be a lack of wireless broadband adoption by consumers. Americans may choose not to adopt broadband service even in areas where service is deployed based on factors, such as price and quality, that may be particularly important in rural communities and other underserved areas. Thus, we seek comment on whether we should incorporate broadband adoption and affordability reporting into the renewal process for WRS licenses or some subset of licenses. Because mobile broadband service is provided to consumers today over multiple spectrum bands, the price, quality, and adoption rates for mobile services are not tied to particular licenses. However, is there some reporting, perhaps at the five-year mark of a license and in a renewal showing that will provide insights into the adoption and affordability of the services being provided using that spectrum and on steps that the Commission may need to take beyond requiring additional construction to facilitate the closing of the digital divide? For instance, what steps has a licensee taken during the license term to address these issues, including among different demographic sub-groups? How successful have those efforts been? What metrics might the Commission specify that would prove helpful in this regard? Finally, we seek comment on what role, if any, these considerations might play for a licensee to obtain renewal.

### C. Penalties and Relicensing

113. In the event we adopt additional renewal term construction obligations—whether through an opt-in or mandatory approach—the implementation of those obligations requires appropriate penalties should licensees fail to meet those obligations. We seek comment on the approaches that will most effectively encourage investment and deployment in rural areas that otherwise would not see significant mobile coverage. In the event that a particular penalty for failure to meet construction obligations involves the return of a licensee’s spectrum to the Commission’s inventory, implementation will also require an effective relicensing scheme for the reassignment of that spectrum. We therefore seek comment on the potential approaches described below. Further, we seek comment on whether any of the penalties described below should vary depending on the Commission’s chosen approach for applying the additional renewal term construction obligation. Should different penalties apply for failure to satisfy construction obligations that are mandatory, as opposed to obligations a licensee has assumed through an opt-in approach?

114. *Penalties.* One possible penalty for failure to satisfy a construction obligation would be a “keep-what-you-serve” penalty for failure to meet additional construction obligations after the initial license term. Under this approach, a licensee’s authorization would terminate automatically for those geographic portions of its license area in which the licensee is not providing service as of the additional construction deadline, and those unserved areas would be returned to the Commission’s inventory for reassignment.<sup>254</sup> The “keep-what-you-serve” approach eliminates the ability of licensees to retain exclusive rights over areas that they do not serve and allows the Commission to reassign unused

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<sup>254</sup> See 700 MHz Second Report and Order, 22 FCC Rcd at 15353, para. 170; see also 47 CFR § 27.14(g)(2), (h)(2), (i)(2).

spectrum, without loss of coverage to subscribers in areas where the licensee is providing service. However, while this penalty promotes access to unused spectrum for those who would wish to serve rural areas, it could potentially create an adverse incentive for licensees to serve the most desirable areas within the license area and leave the rest unserved. Does the loss of authorization in unserved areas provide licensees with sufficient incentive to meet the construction obligations? How well does it further our public interest goal of increasing coverage to rural areas not constructed during a license's initial term? We seek comment on the costs and benefits of a "keep-what-you-serve" approach and how it might be tailored to achieve our goal.

115. Second, we seek comment on a "use or offer" penalty. Under this approach a licensee that fails to meet its additional construction obligation would retain its entire license area, but would be required to negotiate in good faith with any third party seeking to acquire or lease spectrum in the unserved areas of the license. Similar to the "keep-what-you-serve" approach, the "use or offer" penalty prevents spectrum warehousing and provides access to unserved areas for third parties who wish to serve them, while also preserving service to existing customers. However, like the "keep-what-you-serve" penalty, this potential alternative could also create an adverse incentive for licensees to serve the most desirable areas within the license area and leave the rest unserved. We seek comment on whether a "use or offer" penalty, on its own, would be likely to provide significant incentive for wireless providers to meet the additional construction obligations, since they would retain all licensed area they choose to timely serve. We seek comment on the respective costs and benefits of this potential penalty and how it might be tailored to achieve our goal. If commenters support the "use or offer" penalty, we seek comment on whether there are transactional best practices or other indicia of good faith negotiations<sup>255</sup>—e.g., model leases, sale agreements—that might reduce the administrative burdens of such an approach. We also seek comment on whether there are standards other than good faith negotiation for implementing this approach that would be more effective in increasing coverage to rural areas.

116. Third, we seek comment on total loss of the license or a reduction in license area, including loss of areas that the licensee serves, as a penalty for failure to satisfy an additional construction obligation in a renewal term. Given the potential loss of authority to operate in areas where the licensee provides service and may have a customer base, this penalty could provide a significant incentive for licensees to meet their additional construction obligations in renewal terms. Applying this penalty in a renewal term for failure to meet an incremental increase could also harm consumers, however, as it could result in loss of longstanding service to the licensee's subscribers and the disruption of a network that satisfied the renewal standard at the end of the initial license term. We seek comment on the respective costs and benefits of this penalty and how it might be tailored to achieve our goal of incentivizing the provision of service to rural areas. For example, in the event that a licensee loses authority to operate in areas where it provides services to a customer base, are there certain ways of transitioning those customers to other networks that could avoid significant interruptions in service and limit the potential harm to consumers?

117. We generally seek comment on other penalties that could be used as alternatives to, or in combination with, those described above. For instance, the Commission's rules also provide for the assessment of forfeitures where licensees fail to comply with the terms and conditions of the license, including relevant rules and regulations.<sup>256</sup> Would forfeitures be an appropriate penalty for failure to meet additional renewal term construction obligations? We seek comment on these and any other penalties that

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<sup>255</sup> See, e.g., *AT&T Services, Inc. Request for Waiver of Section 27.14(g)*, Letter Order, 2017 WL 239100, DA 17-63 (WTB Jan. 18, 2017) (applying "use or offer" as a condition of a waiver grant and noting, as an example, that good faith negotiations require reasonable market-based rates).

<sup>256</sup> See generally 47 CFR § 1.80. The Commission also provides for assessment of forfeitures within the service-specific rules of certain bands. See, e.g., *id.* § 27.14(g)(2), (h)(2), (i)(2) (certain WCS licensees subject to forfeitures for failing to meet construction obligations).

would provide effective incentives to wireless providers to comply with additional construction obligations and increase wireless communications service to rural areas.

118. *Relicensing.* In the event that the Commission ultimately adopts penalties that result in the return of whole or partial licenses to the Commission's inventory for reassignment, we seek comment on various approaches for relicensing unused spectrum.

119. First, we seek comment on applying a two-phased on-demand relicensing approach, such as the framework established by the Commission in the *700 MHz Second Report and Order*,<sup>257</sup> under which interested parties would be allowed to file applications to serve any amount of available unserved area. Under the framework established there, there is a 30-day Phase 1 filing window during which only the failing licensee is barred, followed by a Phase 2 window, which is open to all interested parties, including the failing licensee, and runs until all unserved areas in the market are relicensed. This framework provides customized access to unserved area, in which all interested parties may participate and auction is only necessary when multiple entities seek the same area at the same time. Because licensees who obtain authorizations through this process are required to cover 100 percent of the geographic area of their chosen license area within one year from license issuance,<sup>258</sup> this framework prevents spectrum warehousing and gives licensees the incentive to select only targeted areas that they intend to immediately deploy. We note, however, that while this framework promotes access to unused spectrum, it facilitates service to rural areas only to the extent that there are licensees who desire to serve those areas. We seek comment on a two-phased application process for the relicensing of spectrum for unserved area, including any variations to the framework adopted for certain 700 MHz licenses, that might serve our rural coverage objectives.

120. Second, we seek comment on relicensing spectrum for unserved areas through a re-auction framework that would offer all remaining unserved areas in the license together in a single auction. This approach would limit direct access to available spectrum to the auction winner and, as with the two-phased on-demand framework, facilitate service to rural areas only to the extent that there are licensees who desire to serve those areas. In contrast to the two-phased on-demand relicensing approach, all interested parties would have to participate in an auction, even in cases where the areas they intend to serve do not overlap.<sup>259</sup> In implementing this approach, we would need to assess the appropriate construction obligations for these partial geographic licenses, and whether the failing licensee should be barred from participating in the auction of area it failed to serve.<sup>260</sup> We seek comment on these issues pertaining to relicensing unserved areas through a re-auction framework and any additional or alternative conditions that might be appropriate.

#### **D. Providing Incentives for Additional Buildout**

121. We also generally seek comment on other possible changes to our rules that might reduce regulatory burdens to improve the renewal process and facilitate the efficient allocation and use of spectrum. What, if any, other incentives could we add to this approach to encourage additional

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<sup>257</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15353-54, paras. 171-75; 47 CFR § 27.14(j)(1). The Commission's rules also provide for a separate, but similar, process for licensing Cellular Unserved Area. See *id.* § 22.949.

<sup>258</sup> See 47 CFR § 27.14(j)(3).

<sup>259</sup> For example, various licensees that neighbor a license with available unserved area may desire certain portions of that available unserved area that do not overlap. In a two-phased relicensing approach, those neighboring licensees could apply for and receive the non-overlapping portions of unserved area without going to auction. However, a single reauction of the entire unserved area of the license would force such parties to compete at auction for all of the unserved area as a whole, including the portions they do not necessarily desire or intend to serve.

<sup>260</sup> See, e.g., 47 CFR § 24.203(a), (b), (d) (licensees that fail to meet construction requirements are ineligible to regain the license).

construction beyond licensees' initial term obligations? Are there other incentives we can provide licensees in order to facilitate acceptance of additional buildout obligations during the renewal period?

122. We seek comment as well on whether it may be appropriate to extend the license term, upon renewal, of subject licenses. For example, a 10-year license term could be extended to 15 years, as an alternative to or in combination with any other approach to the timeframe for implementation. Would the certainty of a longer license term provide licensees with sufficient incentive to make long-term investments in rural deployment? Should any such extension be tied to a licensee voluntarily undertaking any additional construction obligations?

123. In addition, Verizon proposes that the Commission "adopt a presumption that band-specific service rules or conditions will sunset at renewal, absent an affirmative finding that they are necessary in the public interest."<sup>261</sup> We seek comment on what types of rules or conditions should be included under Verizon's proposed sunset presumption, including specific examples, and whether there are categories of regulations that should be excluded from any sunset-at-renewal presumption. We seek comment on the appropriate methodology for efficiently implementing such an approach, including the process for determining whether rules or conditions have become obsolete or impractical, or whether such rules remain necessary in the public interest. Should any sunset presumption be applied on a license-by-license basis, where certain legacy service-specific obligations might sunset for specific licensees at renewal? How and to what extent should the Commission continue to apply these same service-specific obligations to similarly situated licensees whose license terms are not yet ripe for renewal? We also seek detailed comment on the costs and benefits of adopting any rule sunset provision as Verizon proposes.

#### IV. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act Analysis

124. This Second Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

125. We have assessed the effects of the policies adopted in this Second Report and Order and Further Notice of Proposed Rulemaking with regard to information collection burdens on small business concerns, and find that these policies will benefit many companies with fewer than 25 employees because the revisions we adopt should reduce filing burdens for all WRS licensees, whether large or small. Also, by ensuring, pursuant to the partitioning and disaggregation rules and the permanent discontinuance rules we adopt today, that valuable spectrum will not lie fallow, these policies will provide small entities with more opportunities to gain access to valuable spectrum. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B, *infra*.

##### B. Congressional Review Act

126. The Commission will send a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

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<sup>261</sup> Verizon July 27, 2017 *Ex Parte* at 3; Verizon 2017 Comments at 2.

**C. Final Regulatory Flexibility Analysis**

127. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>262</sup> The Final Regulatory Flexibility Analysis concerning the possible impact of the rule changes contained in this Second Report and Order and the WRS Reform R&O is attached as Appendix B.

**D. Initial Regulatory Flexibility Analysis**

128. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the rule revisions proposed in the Further Notice. The analysis is found in Appendix C. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the Further Notice, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**E. Ex Parte Presentations**

129. This proceeding shall continue to be treated as “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>263</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the Commission’s Electronic Comment Filing System (ECFS) available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

**F. Filing Requirements**

130. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,<sup>264</sup> interested parties may file comments and reply comments concerning the Further Notice on or before the dates indicated on the first page of this document. Comments may be filed using ECFS.<sup>265</sup>

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<sup>262</sup> 5 U.S.C. §§ 601 *et seq.*

<sup>263</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>264</sup> 47 CFR §§ 1.415, 1.419.

<sup>265</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121-01 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

131. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.<sup>266</sup> These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

#### **G. Contact Information**

132. For further information regarding the Second Report and Order, contact Joyce Jones at (202) 418-1327 or [joyce.jones@fcc.gov](mailto:joyce.jones@fcc.gov), or Thomas Reed at (202) 418-0531 or [thomas.reed@fcc.gov](mailto:thomas.reed@fcc.gov). For further information regarding the Further Notice of Proposed Rulemaking, contact Anna Gentry at (202) 418-7769 or [anna.gentry@fcc.gov](mailto:anna.gentry@fcc.gov).

#### **V. ORDERING CLAUSES**

133. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 4(j), 7, 301, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 157, 301, 303, 307, 308, 309, 310, 332, that this SECOND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING in WT Docket No. 10-112 IS ADOPTED.

134. IT IS FURTHER ORDERED that Parts 1, 22, 24, 27, 30, 74, 80, 90, 95, and 101 of the Commission's rules, 47 CFR Parts 1, 22, 24, 27, 30, 74, 80, 90, 95, and 101, ARE AMENDED as specified in Appendix A, effective 30 days after publication in the *Federal Register* except as otherwise provided herein.

135. IT IS FURTHER ORDERED that the amendments adopted in this SECOND REPORT AND ORDER, and specified in Appendix A, to Sections 1.949, 1.950, and 1.953, which contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, WILL BECOME EFFECTIVE after OMB review

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<sup>266</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

and approval, on the effective date specified in a notice that the Commission will have published in the *Federal Register* announcing such approval and effective date.

136. IT IS FURTHER ORDERED that the amendments adopted in this SECOND REPORT AND ORDER, and specified in Appendix A, to paragraphs 27.14(e), 27.14(q)(7), 27.14(r)(6), 27.14(s)(6), and 27.14(t)(6), WILL BECOME EFFECTIVE after OMB review and approval of Section 1.949, on the effective date specified in a notice that the Commission will have published in the *Federal Register* announcing such approval and effective date.

137. IT IS FURTHER ORDERED that the amendments adopted in this SECOND REPORT AND ORDER, and specified in Appendix A, to Sections 22.317, 22.947, 27.17, 30.106, 74.632, 90.157, 90.631, and 101.65, WILL BECOME EFFECTIVE after OMB review and approval of Section 1.953, on the effective date specified in a notice that the Commission will have published in the *Federal Register* announcing such approval and effective date.

138. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's rules, 47 CFR § 1.106, the Motion of CTIA – The Wireless Association®, AT&T Services, Inc., Cricket Communications, Inc., Rural Cellular Association, Sprint Nextel Corporation, T-Mobile USA, United States Cellular Corporation and Verizon Wireless To Withdraw Petition for Reconsideration, filed May 31, 2011, to withdraw their Petition for Reconsideration, filed Aug. 6, 2010, IS GRANTED.

139. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the FURTHER NOTICE OF PROPOSED RULEMAKING on or before 30 days after publication in the *Federal Register* and reply comments on or before 60 days after publication in the *Federal Register*.

140. IT IS FURTHER ORDERED that, pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission SHALL SEND a copy of the SECOND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING to Congress and to the Government Accountability Office.

141. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the SECOND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Rules

**Parts 1, 22, 24, 27, 30, 74, 80, 90, 95, and 101 of Title 47 of the Code of Federal Regulations are amended as follows:**

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 is revised to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

2. Amend section 1.907 to add the definitions of “Covered Geographic Licenses” and “Covered Site-based Licenses” in alphabetical order to read as follows:

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*Covered Geographic Licenses.* Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G); 218-219 MHz Service (part 95, subpart F); 220-222 MHz Service, excluding public safety licenses (part 90, subpart T); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subpart F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); Upper Microwave Flexible Use Service (part 30); and Wireless Communications Service (part 27, subpart D).

*Covered Site-based Licenses.* Covered site-based licenses consist of the following services: 220-222 MHz Service (site-based), excluding public safety licenses (part 90, subpart T); 800/900 MHz (SMR and Business and Industrial Land Transportation Pool) (part 90, subpart S); Aeronautical Advisory Stations (Unicom) (part 87, subpart G); Air-Ground Radiotelephone Service (General Aviation) (part 22, subpart G); Alaska-Public Fixed Stations (part 80, subpart O); Broadcast Auxiliary Service (part 74, subparts D, E, F, and H); Common Carrier Fixed Point-to-Point, Microwave Service (part 101, subpart I); Industrial/Business Radio Pool (part 90, subpart C); Local Television Transmission Service (part 101, subpart J); Multiple Address Systems (site-based), excluding public safety licenses (part 101, subpart H); Non-Multilateration Location and Monitoring Service (part 90, subpart M); Offshore Radiotelephone Service (part 22, subpart I); Paging and Radiotelephone Service (site-based) (part 22, subpart E); Private Carrier Paging (part 90, subpart P); Private Operational Fixed Point-to-Point Microwave Service, excluding public safety licenses (part 101, subpart H); Public Coast Stations (site-based) (part 80, subpart J); Radiodetermination Service Stations (Radionavigation Land Stations) (part 87, subpart Q); Radiolocation Service (part 90, subpart F); and Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service) (part 22, subpart F).

3. Revise paragraphs 1.934(a)(1)(ii), 1.934(b), and 1.934(c) to read as follows:

**§ 1.934 Defective applications and dismissal.**

\* \* \* \* \*

(1) \* \* \* \* \*

(ii) If the applicant requests dismissal of its application without prejudice, the Commission will dismiss that application without prejudice, unless it is an application for which the applicant submitted the winning bid in a competitive bidding process.

\* \* \* \* \*

(b) *Dismissal of mutually exclusive applications not granted.* The Commission may dismiss mutually exclusive applications for which the applicant did not submit the winning bid in a competitive bidding process.

(c) *Dismissal for failure to prosecute.* The Commission may dismiss applications for failure of the applicant to prosecute or for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal may be with prejudice in cases of non-compliance with § 1.945 of this part. The Commission may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

4. Amend section 1.934 as follows:

- a. Remove paragraphs 1.934(a)(1)(ii)(A) and 1.934(a)(1)(ii)(B).
- b. Remove paragraph 1.934(a)(3).
- c. Remove paragraphs 1.934(b)(1) and 1.934(b)(2).

5. Revise section 1.949 to read as follows:

**§ 1.949 Application for renewal of authorization.**

(a) *Filing Requirements.* Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization, and no sooner than 90 days prior to the expiration date. Renewal applications must be filed on the same form as applications for initial authorization in the same service, i.e., FCC Form 601 or 605.

(b) *Common Expiration Date.* Licensees with multiple authorizations in the same service may request a common date on which such authorizations expire for renewal purposes. License terms may be shortened by up to one year but will not be extended.

(c) *Implementation.* Covered Site-based Licenses, except Common Carrier Fixed Point-to-Point Microwave Service (part 101, subpart I), and Covered Geographic Licenses in the 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subpart F); Advanced Wireless Services (part 27, subpart L) (AWS-3 (1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz) and AWS-4 (2000-2020 MHz and 2180-2200 MHz) only); and H Block Service (part 27, subpart K) must comply with paragraphs (d) through (h) of this section. All other Covered Geographic Licenses must comply with paragraphs (d) through (h) of this section beginning on January 1, 2023. Common Carrier Fixed Point-to-Point Microwave Service (part 101, subpart I) must comply with paragraphs (d) through (h) of this section beginning on October 1, 2018.

(d) *Renewal Standard.* An applicant for renewal of an authorization of a Covered Site-based License or a Covered Geographic License must demonstrate that over the course of the license term, the licensee(s) provided and continue to provide service to the public, or operated and continue to operate the license to meet the licensee(s)' private, internal communications needs.

(e) *Safe Harbors.* An applicant for renewal will meet the Renewal Standard if it can certify that it has satisfied the requirements of one of the following safe harbors:

(1) *Covered Site-based Licenses.* (i) The applicant must certify that it is continuing to operate consistent with its most recently filed construction notification (or most recent authorization, when no construction notification is required). (ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Site-based License.

(2) *Geographic licenses – commercial service.* (i) For an applicant in its initial license term with an interim performance requirement, the applicant must certify that (1) it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement, the applicant continues to use its facilities to provide at least the level of service required by its interim performance requirement and (2) the licensee has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term. For an applicant in its initial license term with no interim performance requirement, the applicant must certify that it has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term. For an applicant in any subsequent license term, the applicant must certify that it continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of any subsequent license terms. (ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(3) *Geographic licenses – private systems.* (i) For an applicant in its initial license term with an interim performance requirement, the applicant must certify that (1) it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement, the applicant continues to use its facilities to further the applicant's private business or public interest/public safety needs at or above the level required to meet its interim performance requirement and (2) the applicant has met its final performance requirement and continues to use its facilities to provide at least the level of operation required by its final performance requirement through the end of the license term. For an applicant in its initial license term with no interim performance requirement, the applicant must certify that it has met its final performance requirement and continues to use its facilities to provide at least the level of operation required by its final performance requirement through the end of the license term. For an applicant in any subsequent license term, the applicant must certify that it continues to use its facilities to further the applicant's private business or public interest/public safety needs at or above the level required to meet its final performance requirement. (ii) The applicant must certify that no permanent discontinuance of operation occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(4) *Partitioned or disaggregated license without a performance requirement.* (i) The applicant must certify that it continues to use its facilities to provide service or to further the applicant's private business or public interest/public safety needs. (ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(f) *Renewal Showing.* If an applicant for renewal cannot meet the Renewal Standard in paragraph (d) of this section by satisfying the requirements of one of the safe harbors in paragraph (e) of this section, it must make a Renewal Showing, independent of its performance requirements, as a condition of renewal. The Renewal Showing must specifically address the Renewal Standard by including a detailed description of the applicant's provision of service (or, when allowed under the relevant service rules or pursuant to waiver, use of the spectrum for private, internal communication) during the entire license period and address, as applicable:

- (1) the level and quality of service provided by the applicant (e.g., the population served, the area served, the number of subscribers, the services offered);
- (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;
- (3) the extent to which service is provided to rural areas;
- (4) the extent to which service is provided to qualifying tribal land as defined in § 1.2110(e)(3)(i) of this chapter; and
- (5) any other factors associated with the level of service to the public.

(g) *Regulatory Compliance Certification.* An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraph (d) of this section must make a Regulatory Compliance Certification certifying that it has substantially complied with all applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(h) *Consequences of Denial.* If the Commission, or the Wireless Telecommunications Bureau acting under delegated authority, finds that a licensee has not met the Renewal Standard under paragraph (d) of this section, or that its Regulatory Compliance Certification under paragraph (g) of this section is insufficient, its renewal application will be denied, and its licensed spectrum will return automatically to the Commission for reassignment (by auction or other mechanism). In the case of certain services licensed site-by-site, the spectrum will revert automatically to the holder of the related overlay geographic-area license. To the extent that an AWS-4 licensee also holds the 2 GHz Mobile Satellite Service (MSS) rights for the affected license area, the MSS protection rule in section 27.1136 will no longer apply in that license area.

6. Add new section 1.950 to read as follows:

**§ 1.950 Geographic Partitioning and Spectrum Disaggregation.**

(a) *Definitions.* The terms “County and County Equivalent,” “Geographic Partitioning,” and “Spectrum Disaggregation” as used in this section are defined as follows:

(1) *County and County Equivalent.* The terms county and county equivalent as used in this part are defined by Federal Information Processing Standards (FIPS) 6-4, which provides the names and codes that represent the counties and other entities treated as equivalent legal and/or statistical subdivisions of the 50 States, the District of Columbia, and the possessions and freely associated areas of the United States. Counties are the “first-order subdivisions” of each State and statistically equivalent entity, regardless of their local designations (county, parish, borough, etc.). Thus, the following entities are equivalent to counties for legal and/or statistical purposes: The parishes of Louisiana; the boroughs and census areas of Alaska; the District of Columbia; the independent cities of Maryland, Missouri, Nevada, and Virginia; that part of Yellowstone National Park in Montana; and various entities in the possessions and associated areas. The FIPS codes and FIPS code documentation are available online at <http://www.itl.nist.gov/fipspubs/index.htm>.

(2) *Geographic Partitioning.* Geographic partitioning is the assignment of a geographic portion of a geographic area licensee’s license area.

(3) *Spectrum Disaggregation.* Spectrum disaggregation is the assignment of portions of blocks of a geographic area licensee’s spectrum.

(b) *Eligibility.* Covered Geographic Licenses are eligible for Geographic Partitioning and Spectrum Disaggregation.

(1) **Geographic Partitioning.** An eligible licensee may partition any geographic portion of its license area, at any time following grant of its license, subject to the following exceptions:

(i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.

(ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(iii) Multichannel Video & Distribution and Data Service licensees are only permitted to partition licensed geographic areas along county borders (Parishes in Louisiana or Territories in Alaska).

(2) **Spectrum Disaggregation.** An eligible licensee may disaggregate spectrum in any amount, at any time following grant of its license to eligible entities, subject to the following exceptions:

(i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.

(ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(iii) VHF Public Coast (156-162 MHz) spectrum may only be disaggregated in frequency pairs, except that the ship and coast transmit frequencies comprising Channel 87 (*see* § 80.371(c) of this chapter) may be disaggregated separately.

(iv) Disaggregation is not permitted in the Multichannel Video & Distribution and Data Service 12.2-12.7 GHz band.

(c) *Filing Requirements.* Parties seeking approval for geographic partitioning, spectrum disaggregation, or a combination of both must apply for a partial assignment of authorization by filing FCC Form 603 pursuant to § 1.948 of this chapter. Each request for geographic partitioning must include an attachment defining the perimeter of the partitioned area by geographic coordinates to the nearest second of latitude and longitude, based upon the 1983 North American Datum (NAD83). Alternatively, applicants may specify an FCC-recognized service area (e.g., Basic Trading Area, Economic Area, Major Trading Area, Metropolitan Service Area, or Rural Service Area), county, or county equivalent, in which case, applicants need only list the specific FCC-recognized service area, county, or county equivalent names comprising the partitioned area.

(d) *Relocation of Incumbent Licensees.* Applicants for geographic partitioning, spectrum disaggregation, or a combination of both must, if applicable, include a certification with their partial assignment of authorization application stating which party will meet any incumbent relocation requirements, except as otherwise stated in service-specific rules.

(e) *License Term.* The license term for a partitioned license area or disaggregated spectrum license is the remainder of the original licensee's license term.

(f) *Frequency Coordination.* Any existing frequency coordination agreements convey with the partial assignment of authorization for geographic partitioning, spectrum disaggregation, or a combination of both, and shall remain in effect for the term of the agreement unless new agreements are reached.

(g) *Performance Requirements.* Parties to geographic partitioning, spectrum disaggregation, or a combination of both, have two options to satisfy service-specific performance requirements (i.e., construction and operation requirements). Under the first option, each party may certify that it will individually satisfy any service-specific requirements and, upon failure, must individually face any service-specific performance penalties. Under the second option, both parties may agree to share responsibility for any service-specific requirements. Upon failure to meet their shared service-specific performance requirements, both parties will be subject to any service-specific penalties.

(h) *Unjust Enrichment.* Licensees making installment payments or that received a bidding credit, that partition their licenses or disaggregate their spectrum to entities that do not meet the eligibility standards for installment payments or bidding credits, are subject to the unjust enrichment requirements of § 1.2111 of this chapter.

7. Add new section 1.953 to read as follows:

**§ 1.953 Discontinuance of Service or Operations.**

(a) *Termination of Authorization.* A licensee's authorization will automatically terminate, without specific Commission action, if the licensee permanently discontinues service or operations under the license during the license term. A licensee is subject to this provision commencing on the date it is required to be providing service or operating.

(b) *180-day Rule for Geographic Licenses.* Permanent discontinuance of service or operations for Covered Geographic Licenses is defined as 180 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee.

(c) *365-day Rule for Site-based Licenses.* Permanent discontinuance of service or operations for Covered Site-based Licenses is defined as 365 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

(d) *365-day Rule for Public Safety Licenses.* Permanent discontinuance of operations is defined as 365 consecutive days during which a licensee does not operate. This 365-day rule applies to public safety licenses issued based on the applicant demonstrating eligibility under Sections 90.20 or 90.529, or public safety licenses issued in conjunction with a waiver pursuant to Section 337 of the Communications Act.

(e) *Channel Keepers.* Operation of channel keepers (devices that transmit test signals, tones, color bars, or some combination of these, for example) does not constitute operation or service for the purposes of this section.

(f) *Filing Requirements.* A licensee that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service or operations are permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

(g) *Extension Request.* A licensee may file a request for a longer discontinuance period for good cause. An extension request must be filed at least 30 days before the end of the applicable 180-day or 365-day discontinuance period. The filing of an extension request will automatically extend the discontinuance period a minimum of the later of an additional 30 days or the date upon which the Wireless Telecommunications Bureau acts on the request.

8. Amend section 1.955 by revising paragraph (a)(3) to read as follows:

**§ 1.955 Termination of authorizations.**

\* \* \* \* \*

(a) \* \* \*

(3) *Service discontinued.* Authorizations automatically terminate, without specific Commission action, if service or operations are permanently discontinued. *See* § 1.953.

\* \* \* \* \*

#### PART 22—PUBLIC MOBILE SERVICES

9. The authority citation for Part 22 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 222, 303, 309 and 332.

10. Amend section 22.131 as follows:

- a. Remove paragraph 22.131(b)(1).
  - b. Redesignate paragraphs 22.131(b)(2) through (b)(4) as paragraphs 22.131(b)(1) through (b)(3).
  - c. Remove paragraph 22.131(c)(3)(i).
  - d. Redesignate paragraphs 22.131(c)(3)(ii) and (c)(3)(iii) as paragraphs 22.131(c)(3)(i) and 22.131(c)(3)(ii).
  - e. Remove paragraph 22.131(c)(4)(i).
  - f. Redesignate paragraphs 22.131(c)(4)(ii) through (c)(4)(iv) as paragraphs 22.131(c)(4)(i) through (c)(4)(iii)
11. Remove section 22.317.
12. Remove paragraphs 22.513(f)(1) through (f)(4).
13. Remove paragraphs 22.513(g)(1) through (g)(4).
14. Remove section 22.947.

#### PART 24—PERSONAL COMMUNICATIONS SERVICES

15. The authority citation for Part 24 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

16. Remove section 24.16.
17. Remove paragraphs 24.104(f)(1) through (f)(4).
18. Remove paragraphs 24.104(g)(1) through (g)(4).
19. Remove paragraphs 24.714(e)(1)(i) through (e)(1)(v).
20. Remove paragraph 24.714(e)(2).

#### PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

21. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

22. Amend section 27.14 to revise the title and remove and reserve paragraphs (b), (c), (d), (e), and (f) to read as follows:

#### **§ 27.14 Construction requirements.**

\* \* \* \* \*

- (b) [Removed and Reserved].
- (c) [Removed and Reserved].
- (d) [Removed and Reserved].
- (e) [Removed and Reserved].
- (f) [Removed and Reserved]

\* \* \* \* \*

- 23. Amend section 27.14 as follows:
  - a. Remove paragraph 27.14(q)(7).
  - b. Remove paragraph 27.14(r)(6).
  - c. Remove paragraph 27.14(s)(6)
  - d. Remove paragraph 27.14(t)(6).
- 24. Remove paragraph 27.15(d)(1)(i) through (d)(1)(iii).
- 25. Remove paragraph 27.15(d)(2)(i) through (d)(2)(iii).
- 26. Remove section 27.17

#### PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

- 27. The authority citation for Part 30 continues to read as follows:  
AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302.

- 28. Remove paragraphs 30.105(d)(1) through (d)(2).
- 29. Remove section 30.106.

#### PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

- 30. The authority citation for Part 74 continues to read as follows:  
AUTHORITY: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.
- 31. Remove paragraph 74.632(g).

#### PART 80—STATIONS IN THE MARITIME SERVICES

- 32. The authority citation for Part 80 continues to read as follows:  
AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.
- 33. Amend section 80.60 as follows:
  - a. Remove paragraph 80.60(d)(1).
  - b. Remove paragraph 80.60(d)(2).

c. Redesignate paragraph 80.60(d)(3) as paragraph 80.60(d).

34. Revise paragraph 80.60(d) as follows:

**§ 80.60 Partitioned licenses and disaggregated spectrum.**

\* \* \* \* \*

(d) *Partitioning and Disaggregation Construction Requirements for Site-based AMTS, and nationwide or multi-region LF, MF, and HF public coast.* Parties seeking to acquire a partitioned license or disaggregated spectrum from a site-based AMTS, or nationwide or multi-region LF, MF, and HF public coast licensee will be required to construct and commence “service to subscribers” in all facilities acquired through such transactions within the original construction deadline for each facility as set forth in § 80.49. Failure to meet the individual construction deadline will result in the automatic termination of the facility’s authorization.

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

35. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

36. Remove section 90.157.

37. Amend section 90.165 as follows:

- a. Remove paragraphs (b)(1), (c)(3)(i), and (c)(4)(i).
- b. Redesignate paragraphs (b)(2) through (b)(4) as paragraphs (b)(1) through (b)(3).
- c. Redesignate paragraphs (c)(3)(ii) through (c)(3)(iii) as paragraphs (c)(3)(i) through (c)(3)(ii).
- d. Redesignate paragraphs (c)(4)(ii) through (c)(4)(iv) as paragraphs (c)(4)(i) through (c)(4)(iii).
- e. Revise paragraph (c)(3)(ii) as follows:

**§ 90.165 Procedures for mutually exclusive applications.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification, a same-day filing group is used.

\* \* \* \* \*

38. Remove paragraphs 90.365(d)(1)(i) through (d)(1)(ii).

39. Remove paragraph 90.365(d)(2).

40. Amend section 90.375 by revising paragraph (b) to read as follows:

**§ 90.375 RSU license areas, communication zones and registrations**

\* \* \* \* \*

(b) Applicants who are approved in accordance with FCC Form 601 will be granted non-exclusive licenses for all non-reserved DSRC frequencies (see § 90.377). Such licenses serve as a prerequisite of registering individual RSUs located within the licensed geographic area described in paragraph (a) of this section. Licensees must register each RSU in the Universal Licensing System (ULS) before operating such RSU. RSU registrations are subject, inter alia, to the requirements of § 1.923 of this chapter as applicable (antenna structure registration, environmental concerns, international coordination, and quiet zones). Additionally, RSUs at locations subject to NTIA coordination (see § 90.371(b)) may not begin operation until NTIA approval is received. Registrations are not effective until the Commission posts them on the ULS. It is the DSRC licensee's responsibility to delete from the registration database any RSUs that have been discontinued.

\* \* \* \* \*

41. Amend section 90.631 by revising paragraph (f) to read as follows:

**§ 90.631 Trunked systems loading, construction and authorization requirements.**

\* \* \* \* \*

(f) If a station is not placed in permanent operation, in accordance with the technical parameters of the station authorization, within one year, except as provided in § 90.629, its license cancels automatically. For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation.

\* \* \* \* \*

42. Amend section 90.685 by revising paragraph (a) to read as follows:

**§ 90.685 Authorization, construction and implementation of EA licenses.**

(a) EA licenses in the 809-824/854-869 MHz band will be issued for a term not to exceed ten years.

\* \* \* \* \*

43. Amend section 90.743 by revising the title and section to read as follows:

**§ 90.743 Renewal Requirements.**

Until January 1, 2023, all licensees seeking renewal of their authorizations at the end of their license term must file a renewal application in accordance with the provisions of § 1.949 of this chapter. Licensees must demonstrate, in their application, that:

(a) They have provided "substantial" service during their past license term. "Substantial" service is defined in this rule as service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal; and

(b) They have substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.

44. Remove paragraphs 90.813(e)(1)(i) through (e)(1)(v).

45. Remove paragraph 90.813(e)(2).

46. Remove section 90.816.
47. Remove paragraphs 90.911(e)(1)(i)(A) through (e)(1)(i)(E).
48. Remove paragraphs 90.911(e)(1)(ii)(A) through (e)(1)(ii)(E).
49. Remove paragraphs 90.911(e)(2)(i)(A) through (e)(2)(i)(E).
50. Remove paragraph 90.911(e)(2)(ii).
51. Redesignate paragraph 90.911(f) as paragraph 90.911(e).
52. Remove paragraphs 90.1019(d)(1) and (d)(2).

#### PART 95—PERSONAL RADIO SERVICES

53. The authority citation for Part 95 continues to read as follows:  
AUTHORITY: 47 U.S.C. 154, 301, 302(a), 303, and 307(e).
54. Remove paragraphs 95.1923(d)(1) through (d)(4).
55. Revise paragraphs 95.1933(a) and 95.1933(b) to read as follows:

#### **§ 95.1933 Construction requirements.**

(a) Each 218-219 MHz Service licensee must make a showing of “substantial service” within ten years of the license grant. Until January 1, 2023, “substantial service” assessment will be made at renewal pursuant to the provisions and procedures contained in § 1.949 of this chapter.

(b) Until January 1, 2023, each 218-219 MHz Service licensee must file a report to be submitted to inform the Commission of the service status of its system. The report must be labeled as an exhibit to the renewal application. At minimum, the report must include:

\* \* \* \* \*

#### PART 101—FIXED MICROWAVE SERVICES

56. The authority citation for Part 101 continues to read as follows:  
AUTHORITY: 47 U.S.C. 154, 303.
57. Revise section 101.65 to read as follows:

#### **§ 101.65 Termination of station authorizations.**

In addition to the provisions of § 1.953 of this chapter, a site-based license will be automatically terminated in whole or in part without further notice to the licensee upon the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more. A licensee is subject to this provision commencing on the date it is required to be providing service or operating under § 101.63 of this chapter. This provision is inapplicable to blanket authorizations to operate fixed stations at temporary locations pursuant to the provisions of § 101.31(a)(2) of this chapter. *See* § 101.305 of this chapter for additional rules regarding temporary and permanent discontinuation of service.

58. Revise section 101.527 to read as follows:

**§ 101.527 Construction requirements for 24 GHz operations.**

(a) Each licensee must make a showing of “substantial service” within ten years of its license grant. “Substantial service” is a service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal during its past license term. Until January 1, 2023, “substantial service” assessment will be made at renewal pursuant to the provisions and procedures set forth in § 1.949 of this chapter.

(b) Until January 1, 2023, each licensee must, at a minimum file:

\* \* \* \* \*

59. Remove section 101.529.

60. Remove paragraph 101.535(d).

61. Revise section 101.1011 to revise the title and by removing paragraphs (b), (c), and (d) to read as follows:

**§ 101.1011 Construction requirements.**

LMDS licensees must make a showing of “substantial service” in their license area within ten years of being licensed. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

62. Remove paragraph 101.1111(e).

63. Amend section 101.1323 as follows:

a. Remove paragraphs 101.1323(c)(1), 101.1323(c)(2), and 101.1323(c)(3).

b. Redesignate paragraph 101.1323(c)(4) as 101.1323(c).

64. Remove section 101.1327.

65. Amend section 101.1413 by revising the title and paragraphs (b) and (c) to read as follows:

**§ 101.1413 License term and construction requirements.**

\* \* \* \* \*

(b) *Construction requirement.* MVDDS licensees must make a showing of substantial service at the end of five years into the license period and ten years into the license period. The substantial service requirement is defined as a service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. At the end of five years into the license term and ten years into the license period, the Commission will consider factors such as:

(1) Whether the licensee's operations service niche markets or focus on serving populations outside of areas serviced by other MVDDS licensees;

(2) Whether the licensee's operations serve populations with limited access to telecommunications services; and

(3) A demonstration of service to a significant portion of the population or land area of the

licensed area.

(c) The renewal application of an MVDDS licensee is governed by § 1.949 of this chapter.

66. Remove paragraph 101.1415(f).

67. Amend section 101.1513 by revising the title to read as follows:

**§ 101.1513 License term.**

\* \* \* \* \*

## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Order* in the 2010 WRS Reform proceeding, WT Docket No. 10-112, released in May 2010 (*WRS Reform NPRM*).<sup>2</sup> The Commission sought public comment on the proposals in the *WRS Reform NPRM*, including comments on the WRS Reform IRFA. No comments were filed addressing the WRS Reform IRFA in WT Docket No. 10-112. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In today's Second Report and Order, the Commission takes three actions. First, the Commission adopts uniform renewal policies and procedures for licenses in Wireless Radio Services (WRS)<sup>4</sup> to promote the efficient use of spectrum resources and to serve the public interest by providing licensees certainty regarding their license renewal requirements. Specifically, the Commission generally applies its 700 MHz Commercial Services Band framework,<sup>5</sup> with certain refinements, to services licensed by geographic area and services licensed on a site-by-site basis. As part of this framework, the Commission adopts rules prohibiting the filing of competing renewal applications for all WRS licenses and eliminates the remaining comparative renewal procedures and requirements across various rule parts. Second, the Commission harmonizes its rules regarding the permanent discontinuance of operations by WRS licensees. A harmonized permanent discontinuance rule will work in concert with the Commission's construction and renewal obligations to ensure that licensees provide service in a timely manner, continue to provide service over the term of the license, and do not discontinue service for extended periods of time. Third, the Commission standardizes its requirements regarding the responsibilities of parties to geographic partitioning and spectrum disaggregation arrangements in order to facilitate efficient spectrum use, enable service providers to configure geographic area licenses and spectrum blocks to meet their operational needs, and eliminate loopholes in its partitioning and disaggregation rules that enable parties to avoid timely construction. All of these rule changes further the Commission's goal to make its rules clearer and consistent across services and to simplify the regulatory process for licensees.

3. Today's Second Report and Order adopts rules that harmonize the Commission's previous widely varying wireless license renewal requirements. Specifically, a WRS licensee, whether

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services; Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications*, WT Docket No. 10-112, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996, Appx. B (2010) (*WRS Reform NPRM and Order*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> Section 1.907 of the Commission's rules defines the term "Wireless Radio Services" as "[a]ll radio services authorized in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of this chapter, whether commercial or private in nature." 47 CFR § 1.907. We note that Part 26 no longer exists.

<sup>5</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8092-94, paras. 73-77 (2007) (*700 MHz First Report and Order*).

geographic or site-based, that applies for renewal, must demonstrate that, over the course of its license term, the licensee provided and continues to provide service to the public, or operated and continues to operate the license to meet the licensee's private, internal communications needs. For this purpose, the Commission adopts a set of safe harbors that will serve the public interest by curtailing filing burdens on licensees and concentrating scarce Commission resources on reviewing renewal filings that warrant close scrutiny. Specifically, the Commission adopts four safe harbors to accommodate four license renewal scenarios: (1) site-based licenses; (2) wireless providers using geographic licenses; (3) private systems using geographic licenses; and (4) partitioned or disaggregated licenses without a performance requirement. In each of these contexts, licensees will be able to obtain license renewal by making service-specific certifications indicating, among other things, that they have satisfied all applicable performance requirements (for geographic licensees) or that they continue to operate consistent with their most recent construction notification (or authorization when no construction notification is required) (for site-based licenses), that they have not discontinued service for extended periods of time, and that they have substantially complied with all applicable FCC rules, policies, and the Communications Act of 1934, as amended (Act). If a licensee is unable to satisfy our renewal standard under one of the enumerated safe harbors, it may nonetheless meet the renewal standard by making the more detailed renewal showing set forth in this Second Report and Order at Appendix A, Section 1.949(f)(1-5). Each of the factors listed in Section 1.949(f) directly relates to service or operation over the license term.

4. The Commission's experience with the comparative renewal process has shown that it can result in protracted litigation that can be unduly burdensome for an incumbent licensee and strain available resources, and therefore, the Commission has concluded that "the public interest is ill served if a renewal applicant must operate under a cloud of litigation."<sup>6</sup> Today's Second Report and Order adopts rules prohibiting the filing of competing renewal applications for all WRS and eliminates the remaining comparative renewal procedures and requirements across various rule parts.

5. The Commission's permanent discontinuance of operations rules are intended to provide licensees operational flexibility, while preventing spectrum warehousing. The definition of permanent discontinuance, however, varies by service, and some services contain no definition, enabling spectrum warehousing. In today's Second Report and Order at Appendix A, Section 1.953, the Commission adopts a standardized approach to its discontinuance rules for all WRS licensees. These new rules strike the appropriate balance between providing licensees with operational flexibility and ensuring spectrum is not warehoused and does not lie fallow.

6. In the *WRS Reform NPRM*, the Commission proposed rules to conform and consolidate construction and performance obligations for parties to partitioning and disaggregation arrangements in order to facilitate efficient spectrum use while enabling service providers to configure geographic area licenses and spectrum blocks to meet their operational needs.<sup>7</sup> At present, there are a wide variety of wireless radio services under the Commission's authority that are subject to equally varied construction and performance obligations. The Commission has observed that some wireless licensees can, and sometimes do, manipulate partitioning and disaggregation requirements to avoid construction obligations and allow spectrum to lie fallow for long periods of time, contrary to the Commission's stated goal of maximizing efficient spectrum use.<sup>8</sup> Today's Second Report and Order adopts Section 1.950 largely as proposed in the *WRS Reform NPRM*, with the exception of Section 1.950(g), which the Commission revised to address industry concerns that the rule proposed in the *WRS Reform NPRM* could potentially deter secondary market activity or create more extensive construction obligations for licensees than would have been required had the partitioning or disaggregation not taken place. Section 1.950, and Section 1.950(g), as revised herein, are crafted to provide comparable treatment across services and eliminate

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<sup>6</sup> *WRS Reform NPRM*, 25 FCC Rcd at 7012, para. 40.

<sup>7</sup> *Id.* at 7025, para. 76.

<sup>8</sup> *Id.* at 7023, para. 72.

loopholes in the Commission's partitioning and disaggregation rules that enable parties to avoid timely construction.

7. All new and revised rules adopted in today's Second Report and Order are set forth in Appendix A (Final Rules).

**B. Summary of Significant Issues Raised by Public Comments in Response to IRFA**

8. There were no comments filed that specifically addressed the proposed rules and policies presented in the WRS Reform IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the WRS Reform IRFA on small entities and reduced the compliance burden for all small entities (as discussed below in Section F) in order to reduce the economic impact of the rules enacted herein on such entities. The Commission's efforts to create consistent requirements for renewal of licenses and consistent consequences for discontinuance of service, and to clarify construction obligations for spectrum licenses that have been divided by geographic partitioning and spectrum disaggregation, will reduce the burden on all WRS licensees, including small entity WRS licensees.

**C. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration**

9. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>9</sup>

10. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

11. The RFA directs agencies to provide a description of—and where feasible, an estimate of—the number of small entities that may be affected by the rules adopted herein.<sup>10</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>11</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>12</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>13</sup>

12. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>14</sup> First, while there are industry specific size standards for small businesses that are used in the

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<sup>9</sup> 5 U.S.C. § 604(a)(3).

<sup>10</sup> 5 U.S.C. § 604(a)(3).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>13</sup> 15 U.S.C. § 632.

<sup>14</sup> See 5 U.S.C. § 601(3)-(6).

regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>15</sup> These types of small businesses represent 99.9 percent of all businesses in the United States, which translates to 28.8 million businesses.<sup>16</sup> Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>17</sup> Nationwide, as of 2007, there were approximately 1,621,215 small organizations.<sup>18</sup> Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>19</sup> U.S. Census Bureau data published in 2012 indicate that there were 89,476 governmental jurisdictions in the United States.<sup>20</sup> We estimate that, of this total, as many as 88,761 entities may qualify as "small governmental jurisdictions."<sup>21</sup> Thus, we estimate that most governmental jurisdictions are small. In completing this FRFA, we recognize that small governmental jurisdictions may be WRS licensees.

13. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>22</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

14. The Commission has determined from data available in its Universal Licensing System that there are approximately 394,792 licensees in the Wireless Radio Services<sup>23</sup> affected by this Second Report and Order, as of July 10, 2017; the Commission does not know how many licensees in these

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<sup>15</sup> See SBA, Office of Advocacy, "Frequently Asked Questions, Question 1—What is a small business?," [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>16</sup> See SBA, Office of Advocacy, "Frequently Asked Questions, Question 2—How many small business are there in the U.S.?" [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>17</sup> 5 U.S.C. § 601(4).

<sup>18</sup> INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

<sup>19</sup> 5 U.S.C. § 601(5).

<sup>20</sup> U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012 at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

<sup>21</sup> The 2012 U.S. Census data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, City and Town Totals Vintage: 2011, <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

<sup>22</sup> NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210>.

<sup>23</sup> This number includes licensees in the geographic-based services listed in Appendix H of this Second Report and Order and Further Notice of Proposed Rulemaking, and the site-based services listed in Appendix G. Please note that a licensee in one service may also be a licensee in another service, and thus the number of discrete licensees in affected services may actually be smaller.

services are small entities, as the Commission does not collect that information for these types of entities. The Commission notes that, under the rules it is adopting in this Second Report and Order, entities, including small businesses, will have to comply with a single set of rules regarding license renewal in the WRS. The Commission does not know how many entities that will file for WRS license renewal will be small entities. Thus, the Commission assumes, for purposes of this FRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our proposed small business definitions for these bands, if any.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

15. The projected reporting, recordkeeping, and other compliance requirements resulting from the Second Report and Order will apply to all entities in the same manner. The rule modifications, taken as a whole, should have a beneficial, if any, reporting, recordkeeping, or compliance impact on small entities because all WRS licensees may use the Commission's new, streamlined renewal procedures. We also expect today's action to better enable all WRS licensees, no matter their size, to use spectrum effectively in furtherance of the interests of the public and to configure geographic area licenses and spectrum blocks to meet their own operational needs.

16. The primary changes are as follows: (1) we harmonize and consolidate the Commission's renewal policies and procedures for WRS licensees by (a) adopting four safe harbors to accommodate four license renewal scenarios—site-based licenses, wireless providers using geographic licenses, private systems using geographic licenses, and partitioned licenses without a performance requirement—and establishing streamlined certification procedures and standards for licensees seeking renewal, (b) establishing a more detailed, but uniform, renewal showing process for licensees that are unable to satisfy the renewal standard under one of the enumerated safe harbors, and (c) adopting rules prohibiting the filing of competing renewal applications for all WRS and eliminating the remaining comparative renewal procedures and requirements across various rule parts; (2) we adopt a standardized approach to our discontinuance rules for all WRS licensees, i.e., defining permanent discontinuance for most geographic area licensees as 180 consecutive days during which a licensee does not operate or provide service and as 365 consecutive days for site-based licensees; and (3) we revise and consolidate the rules governing partitioning and disaggregation of WRS licenses to provide consistent requirements across services and require that both parties to such arrangements certify that they will either independently satisfy any applicable construction and performance requirements for renewal purposes, or that they will share any service-specific construction and performance requirements.

17. In paragraphs 15-25 of this Second Report and Order, the Commission sets forth the safe harbor rules and procedures that WRS licensees must follow to certify that they satisfy our renewal standard. These rules are generally applicable to all WRS licensees, large and small.

18. *Site-based licensees.* A site-based licensee must certify: (1) that it is continuing to operate consistent with the licensee's most recently filed construction notification (or most recent authorization, when no construction notification is required); (2) that no permanent discontinuance of service occurred during the license term; and (3) that it has substantially complied with all applicable FCC rules, policies, and the Act.

19. *Wireless Providers Using Geographic Licenses.* A geographically licensed WRS licensee providing service to customers will meet our renewal standard if it can satisfy the following safe harbor for geographic licenses. First, for a licensee in its initial license term with an interim performance requirement, the licensee must certify that (1) it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement, the licensee has continued and continues to use its facilities to provide at least the level of service required by its interim performance requirement, and (2) the licensee has met its final performance requirement. For a licensee in its initial license term with no interim performance requirement, the licensee must certify that it has met its final performance requirement. For a licensee in any subsequent license term, the licensee must certify that it has continued and continues to use its facilities to provide at least the level of service

required by its final performance requirement through the end of any subsequent license terms. Second, the licensee must certify that no permanent discontinuance of service occurred during the license term. Finally, the licensee must certify that it has substantially complied with all applicable FCC rules, policies, and the Act.

20. *Private Systems Using Geographic Licenses.* A geographically licensed WRS licensee using its license for private, internal purposes will meet our renewal standard if it can satisfy the following safe harbor. First, for a licensee in its initial license term with an interim performance requirement, the licensee must certify that (1) it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement, the licensee has continued and continues to use its facilities to further the licensee's private business or public interest/public safety needs at or above the level required to meet its interim performance requirement and (2) the licensee has met its final performance requirement. For a licensee in its initial license term with no interim performance requirement, the licensee must certify that it has met its final performance requirement. For a licensee in any subsequent license term, the licensee must certify that it has continued and continues to use its facilities to further the licensee's private business or public interest/public safety needs at or above the level required to meet its final performance requirement. Second, the licensee must certify that no permanent discontinuance of service occurred during the license term. Finally, the licensee must certify that it has substantially complied with all applicable FCC rules, policies, and the Act.

21. *Partitioned or Disaggregated Licenses Without a Performance Requirement.* Such a licensee will meet our renewal standard if it can satisfy the following safe harbor. First, the licensee must certify that it continues to use its facilities to provide service or to further the licensee's private business or public interest/public safety needs. Second, the licensee must certify that no permanent discontinuance of service occurred during the license term. Finally, the licensee must certify that it has substantially complied with all applicable FCC rules, policies, and the Act.

22. In paragraph 31 of this Second Report and Order, the Commission sets forth the detailed renewal showing that must be made by any WRS licensee that cannot satisfy our renewal standard under one of the enumerated safe harbors set forth above. These rules are also generally applicable to all WRS licensees, large and small. Specifically, an incumbent geographic area WRS licensee that cannot satisfy our renewal standard under an enumerated safe harbor, but still seeks to renew its license, can nonetheless meet the renewal standard by demonstrating that it is providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), using the following renewal showing: (1) the level and quality of service/operation provided by the applicant (e.g., for service—the population served, the area served, the number of subscribers, the services offered; for operation—the number of users (if applicable), the operating area, the type of operation); (2) the date service/operation commenced, whether service/operation was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service/operation is provided to/in rural areas; (4) the extent to which service/operation is provided to/in tribal lands; and (5) any other factors associated with a licensee's level of service to the public/operation.

23. Harmonization of the rules in the affected wireless services will streamline the renewal process. The Commission believes this action will have the effect of lessening the recordkeeping burden by making the renewal process more straight-forward; this is particularly so for an FCC licensee with authorizations in more than one of the affected services.

24. We also do not anticipate that the revised rules governing the renewal process for WRS licensees will impose burdens beyond existing compliance costs for small entities. While the Commission is not currently in a position to determine whether these rule changes will require small entities to hire attorneys, engineers, consultants, or other professionals, we believe licensees will largely be able to employ the compliance mechanisms they already have in place. Additionally, by streamlining existing renewal requirements, adopting more flexible discontinuance and regulatory compliance rules, clarifying partitioning and disaggregation obligations, and disallowing the filing of competing (i.e.,

mutually exclusive) renewal applications, the rules we adopt today will reduce existing reporting, recordkeeping, and other compliance requirements.

25. We believe that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. In fact, the revisions adopted by the Commission should benefit small entities by reducing certain administrative burdens while simultaneously giving them more flexibility in their WRS operations.

**F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

26. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.”<sup>24</sup>

27. We believe that the safe harbor provisions in today’s Second Report and Order significantly reduce filing burdens for all WRS licensees seeking renewal, whether large or small. Indeed, small entities derive particular benefit from these changes because they generally lack the kind of staffing and economic resources that their larger counterparts rely on to manage filing and administrative obligations. Furthermore, the partitioning and disaggregation rules we adopt today as well as the permanent discontinuance rules, we believe, continue to facilitate the efficient use of spectrum while preventing spectrum warehousing. By ensuring that spectrum is not allowed to lie fallow, we promote the availability of a valuable, highly sought after resource, to entities in the market place that are willing and able to put such spectrum to good use. These rules, we believe, will enable rather than undermine secondary market activity, which in turn presents more opportunity to participate in the market for many new entrants, including small entities.

28. We believe that today’s adoption of uniform renewal policies for licensees in the various Wireless Radio Services and harmonization of its rules regarding the permanent discontinuance of operations by WRS licensees will benefit all WRS applicants and licensees, regardless of size. We believe that complying with the previous license renewal rules, varied as they were, had the potential to place a particular burden on the limited financial resources of small businesses. We therefore believe that uniform renewal rules throughout the Wireless Radio Services, and harmonizing its rules regarding the definition of, and what constitutes, permanent discontinuance of operations, will have the intended consequences of assisting small entities that are WRS licensees.

**Report to Congress**

29. The Commission will send a copy of this Second Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>25</sup> In addition, the Commission will send a copy of this Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Second Report and Order and this FRFA (or summaries thereof) will also be published in the *Federal Register*.<sup>26</sup>

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<sup>24</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>25</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>26</sup> 5 U.S.C. § 604(b).

## APPENDIX C

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking (Further Notice)*. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Today's *Further Notice* seeks comment on a range of possible actions that may advance the Commission's goal of increasing the number of rural Americans with access to wireless communications services. A core Commission goal is to facilitate access to scarce spectrum resources and ensure that wireless communication networks are widely deployed so that every American, regardless of location, can benefit from a variety of communications offerings made available by Commission licensees. In pursuit of that goal, the Commission has, through various service rulemakings, created flexible-use geographic licenses and established initial term construction obligations tailored to specific bands, many of which were adopted with the stated intent of promoting service in rural areas.

3. Although the Commission's efforts have facilitated the rapid development of a wide variety of wireless services over the past decade, there remains a real and growing digital divide between rural and urban areas in the United States. While the construction obligations associated with geographic licenses are intended to encourage wide deployment of wireless networks, those obligations require licensees to provide service to only portions of the license area, not the entire area. Even the Commission's most aggressive initial term construction obligation, which requires licensees to cover 70 percent of the geographic area of the license,<sup>4</sup> likely leaves significant portions of rural America, where deployment costs may be higher and demand lower, without meaningful mobile coverage. In addition, the Commission's current rules do not require any additional construction after the initial license term – that is, during subsequent renewal terms.

4. Therefore, in order to encourage investment in wireless networks, facilitate access to scarce spectrum resources, and promote the rapid deployment of mobile services to rural Americans, we seek comment on additional, reasonable construction obligations during renewal terms that are targeted to reach rural areas that lack adequate service. Specifically, we seek comment on an additional construction obligation beyond a licensee's initial term construction obligations, under which the licensee would be required to exceed its original construction metric by an additional 10 percent in the next full renewal term, followed by incremental increases of five or 10 percent in subsequent renewal terms. We also seek comment on other, targeted construction obligations that might achieve our goal of expanded coverage with respect to spectrum bands used to provide service to consumers. In light of the wide variety of flexible geographic licenses and their potential uses, we seek comment on whether to apply any additional renewal term construction obligations to all flexible geographic licenses, or whether certain types of licenses should be excluded. Similarly, we seek comment on whether any additional renewal term

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> See 47 CFR § 27.14(g).

obligations should vary depending on the type of license, or the specific band, to which they would apply, and, if so, why those obligations should vary.

5. In the event we adopt additional construction obligations for license renewal terms, the *Further Notice* seeks comment on various implementation issues. First, we seek comment on requiring licensees to meet the additional construction obligations at the end of the next full renewal license term. As an alternative, we seek comment on requiring licensees to satisfy at least some additional renewal term construction obligations by a certain number of years into their renewal term, e.g., five years into a ten-year renewal term. Finally, we also seek comment on whether it may be appropriate to extend the license term, upon renewal, of subject licenses. For example, a 10-year license term could be extended to 15 years, as an alternative to or in combination with any other approach to the timeframe for implementation. We seek comment on these and any other considerations concerning the timeframe for implementation that will most effectively facilitate rapid deployment of wireless communications services to rural areas. We also seek comment on possible renewal reporting obligations that could provide insights into the adoption and affordability of services being provided by wireless carriers and that may help achieve our goal of closing the digital divide, particularly in rural areas.

6. In order to create incentives for additional license construction, including investment in rural areas, the *Further Notice* seeks comment on appropriate penalties should licensees fail to meet those obligations. First, we seek comment on the “keep-what-you-serve” penalty for failure whereby a licensee’s authorization would terminate automatically for those geographic portions of its license area in which the licensee is not providing service as of the construction deadline, and those unserved areas would be returned to the Commission’s inventory for reassignment. Second, we seek comment on a “use or offer” penalty whereby a licensee that fails to meet its construction obligation would retain its entire license area, but would be required to negotiate in good faith with any third party seeking to acquire or lease spectrum in the unserved areas of the license. Third, we seek comment on a penalty resulting in total loss of the license or a reduction in license area, including loss of areas that the licensee serves. Finally, we seek comment generally on other penalties, including forfeitures, that could be used as alternatives to, or in combination with, those described above.

7. In the event that the Commission ultimately adopts penalties that result in the return of whole or partial licenses to the Commission’s inventory for reassignment, we seek comment on various approaches for relicensing unused spectrum. First, we seek comment on applying a two-phased on-demand relicensing approach, such as the framework established by the Commission in the *700 MHz Second Report and Order*,<sup>5</sup> under which interested parties would be allowed to file applications to serve any amount of available unserved area. Under the framework established there, there is a 30-day Phase 1 filing window during which only the failing licensee is barred, followed by a Phase 2 window, which is open to all interested parties, including the failing licensee, and runs until all unserved areas in the market are relicensed. In the alternative, we seek comment on relicensing spectrum for unserved areas through a re-auction framework that would offer all remaining unserved areas in the license together in a single auction. We seek comment on the respective costs and benefits of both approaches to relicensing and any additional or alternative conditions that might serve our rural coverage objectives.

## **B. Legal Basis**

8. The legal basis for any action that may be taken pursuant to the *Further Notice* is contained in Sections 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332.

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<sup>5</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15353-54, para. 171-75; 47 CFR § 27.14(j)(1).

### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of—and where feasible, an estimate of—the number of small entities that may be affected by the rules, if adopted.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>9</sup>

10. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>10</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>11</sup> These types of small businesses represent 99.9 percent of all businesses in the United States, which translates to 28.8 million businesses.<sup>12</sup> Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>13</sup> Nationwide, as of 2007, there were approximately 1,621,215 small organizations.<sup>14</sup> Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>15</sup> U.S. Census Bureau data published in 2012 indicate that there were 89,476 governmental jurisdictions in the United States.<sup>16</sup> We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”<sup>17</sup> Thus, we estimate that most governmental jurisdictions are small.

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<sup>6</sup> 5 U.S.C. § 604(a)(3).

<sup>7</sup> 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>9</sup> 15 U.S.C. § 632.

<sup>10</sup> See 5 U.S.C. § 601(3)-(6).

<sup>11</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1—What is a small business?,” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>12</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2—How many small business are there in the U.S.?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>13</sup> 5 U.S.C. § 601(4).

<sup>14</sup> INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

<sup>15</sup> 5 U.S.C. § 601(5).

<sup>16</sup> U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012 at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

<sup>17</sup> The 2012 U.S. Census data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government

(continued....)

11. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>18</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>19</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

12. The Commission has determined from data available in its Universal Licensing System that there are approximately 32,483 licensees in the Wireless Radio Services<sup>20</sup> affected by this *Further Notice*, as of July 10, 2017. The Commission does not know how many licensees in these bands are small entities, as the Commission does not collect that information for these types of entities. The Commission notes that, under the rules it proposes in this *Further Notice*, entities, including small businesses, will have to comply with a single set of rules regarding license renewal in the WRS. The Commission does not know how many entities that will file for WRS license renewal will be small entities. Thus, the Commission assumes, for purposes of this IRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our proposed small business definitions for these bands, if any.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

13. The potential rule changes proposed in this *Further Notice* if adopted, could, at least initially, impose some new reporting, recordkeeping, or other compliance requirements on some small entities. In order to evaluate any new or modified reporting, recordkeeping, or other compliance requirements that may result from the actions proposed in this *Further Notice*, the Commission has sought input from the parties on various matters.

14. In this *Further Notice*, the Commission seeks public comment on various actions to increase the deployment of wireless communications services, specifically targeted to reach rural areas that lack adequate access.

15. The Commission also seeks comment on requiring additional, incremental construction obligations during a licensee's renewal terms. Current construction obligations require licensees, including small entities, to construct only portions of their license area (e.g., providing coverage to 67 percent of the population), not the entire area. Licensees are only subject to those construction obligations during their initial license term, after which they retain exclusive spectrum rights to the entire license area – even the unserved portions. In order to increase the number of Americans with access to mobile coverage, especially those in unserved and underserved areas, the potential additional renewal

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organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, City and Town Totals Vintage: 2011, <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

<sup>18</sup> NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

<sup>19</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>20</sup> This number includes licensees in the geographic-based services listed in Appendix H of this Second Report and Order and Further Notice of Proposed Rulemaking. Please note that a licensee in one service may also be a licensee in another service, thus the number of discrete licensees in affected services may actually be smaller.

term construction obligations would increase construction obligations of all licensees, including small entities, by 10 percent in a licensee's next renewal term, followed by incremental increases of five or 10 percent in subsequent renewal terms. The additional compliance burden is prospective, in that it would not apply until a licensee's next full license term should they choose to renew their license.

16. In the event that the Commission adopts additional renewal term construction obligations, small entities that are subject to the rules would be required to make the necessary filings with the Commission to demonstrate compliance with the new obligations. Small entities are already required to file construction notifications during their initial license terms, and will likely be able to allocate the same resources they currently use in order to make the necessary filings under any new rules. Furthermore, the filings will not increase in frequency as a result of any new additional renewal term construction obligations, as today's Second Report and Order already adopts rules requiring licensees to make renewal term demonstrations of compliance with newly adopted renewal term requirements. If adopted, any potential additional renewal term construction obligations discussed in this *Further Notice*, including any possible reporting obligations concerning price and quality of services, would likely be integrated and harmonized with the renewal term demonstrations adopted in today's Second Report and Order.

17. We do not anticipate that the proposed additional renewal term construction obligations will impose burdens beyond existing compliance costs for small entities. While the Commission is not currently in a position to determine whether, if adopted, these additional obligations will require small entities to hire attorneys, engineers, consultants, or other professionals, we believe licensees will largely be able to employ the compliance mechanisms they already have in place. The Commission does not believe that the costs and/or administrative burdens associated with any potential additional renewal term construction obligations will unduly burden small entities, but seeks comment on whether the obligations should vary depending on the type of license, size of the license area, or the services the licensee provides.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

18. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.”<sup>21</sup>

19. To evaluate options and alternatives should there be a significant economic impact on small entities as a result of actions that have been proposed in this *Further Notice*, the Commission has sought comment from the parties. First, in this *Further Notice*, the Commission seeks comment on renewal term construction obligations that would result in an increase of 10 percent over the construction obligation a licensee was required to satisfy during its initial license term. Instead of requiring all licensees to meet a specific metric (e.g., coverage to 95 percent of the population), we seek comment on the 10 percent increase of the respective initial term construction obligations of each license in order to avoid unduly burdening those licensees that may have had much lower initial term construction obligations than others. Specifically for small entities, who may have fewer resources and less established channels of infrastructure, this incremental approach provides licensees with an achievable requirement that will promote the Commission's goals within a reasonable timeframe. Furthermore, in this *Further Notice* we seek comment on whether the obligations should vary depending on the type of license, size of the license area, or the services the licensee provides. Because small entities typically have smaller license areas and provide different types of services than large carriers, this potential

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<sup>21</sup> 5 U.S.C. § 603(c)(1)-(4).

variation would provide flexibility for small entities to comply with any additional construction obligations.

20. Second, we seek comment on whether it may be appropriate to extend the license term, upon renewal, of licenses subject to any new construction obligations. For example, we seek comment on extending a 10-year license term to 15 years. Specifically for small entities who must allocate resources carefully over the length of their license term and have more limited funds should they be required to compete at auction for a particular license, the certainty of a longer license term would provide licensees with sufficient incentive to make the long-term investments necessary for compliance.

21. Third, in order to tailor any new construction obligations to our goals and avoid imposing undue burdens, the Commission seeks comment on whether to limit the scope of licensees subject to any new rules. We seek comment on whether any additional renewal term obligations should vary depending on the type of license, or the specific band, to which they would apply, and, if so, why those obligations should vary. Furthermore, because some licensees in the same band, for example, could choose to provide mobile or fixed services to consumers, provide fixed services to businesses, or use the license for private internal communications, we seek comment on whether any additional renewal term construction obligations should apply to all types of uses within a band, or only particular types. Because application of any new rules to certain licensees may not actually achieve the Commission's goals, the proposed limited scope minimizes the impact on small entities and avoid unduly burdening small licensees.

22. Finally, in the event that the Commission ultimately adopts penalties that result in the return of whole or partial licenses to the Commission's inventory for reassignment, the *Further Notice* seeks comment on various approaches for relicensing unused spectrum specifically with the goal of increasing access for licensees – often small entities – that wish to serve unserved and underserved areas. As discussed in the *Further Notice*, a two-phased on-demand relicensing framework would provide customized access to unserved area, in which all interested parties may participate with no filing fee and auction is only necessary when multiple entities seek the same area at the same time. For small entities with limited funds to compete at auction, this approach would provide affordable access to unused spectrum. It would also allow small entities, who may lack the necessary resources to meet construction obligations for large license areas, to select targeted, small areas that are more manageable to construct and maintain.

23. The *Further Notice* does not propose any exemption for small entities. The Commission finds an overriding public interest in encouraging investment in wireless networks, facilitating access to scarce spectrum resources, and promoting the rapid deployment of mobile services to rural Americans. All licensees, including small entities, play a crucial role in achieving these goals. Therefore, while the *Further Notice* seeks comment on alternative obligations, timing for implementation, scope of subject licenses, penalties for failure, and frameworks for relicensing unserved area that could accommodate the needs and resources of small entities, an exemption would be contrary to the Commission's overarching goal.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

24. None.

**APPENDIX D****List of Commenters**

In response to the *WRS Reform NPRM and Order*, the Commission received 33 comments and 19 reply comments. On May 2, 2017, the Wireless Telecommunications Bureau released a Public Notice requesting comments to update the record in this proceeding. In response, six parties filed comments and four parties filed reply comments. In addition, following adoption of the NPRM, the Commission has received *ex parte* filings from 10 parties.

2010 Comments

AT&T Services, Inc. (AT&T)  
The Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (Blooston)  
C&W Enterprises, Inc. (C&W)  
The Catholic Television Network (CTN) and the National EBS Association (NESBA)  
Clarendon Foundation, Inc. (Clarendon)  
Clearwire Corporation (Clearwire)  
CommNet Wireless, LLC (CommNet)  
Compsec Corporation (Compsec)  
CTIA – The Wireless Association (CTIA)  
Enterprise Wireless Alliance (EWA)  
FiberTower Corporation (FiberTower)  
Green Flag Wireless, LLC, CWC License Holding, LLC, and James McCotter (Green Flag)  
Hispanic Information and Telecommunications Network, Inc. (HITN)  
Land Mobile Communications Council (LMCC)  
LightSquared Inc. (LightSquared)  
MariTEL, Inc. (MariTEL)  
MetroPCS Communications, Inc. (MetroPCS)  
The Metropolitan Transportation Authority (MTA)  
Motorola, Inc. (Motorola)  
N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (Viaero)  
New York State Electric & Gas Corporation (NYSEG)  
PacifiCorp, MidAmerican Energy Company, and Puget Sound, Inc. (PacifiCorp)  
Sensus USA Inc. (Sensus)  
Southern Company Services, Inc. (Southern)  
SpeedNet, LLC (SpeedNet)  
Sprint Nextel Corporation (Sprint)  
T-Mobile USA, Inc. (T-Mobile)  
United States Cellular Corporation (USCC)  
USA Mobility, Inc. (USA Mobility)  
Verizon Wireless (Verizon)  
The WCS Coalition (WCS Coalition)  
The Wireless Communications Association International, Inc. (WCAI)  
James Edwin Whedbee (Whedbee)

2010 Reply Comments

The Alarm Industry Communications Committee (AICC)  
AT&T  
Blooston  
Cheboygan-Otsego-Presque Isle ESD (COPESD)

Clarendon  
CTIA  
Entergy Services, Inc. (Entergy)  
EWA  
The Fixed Wireless Communications Coalition (FWCC)  
Green Flag  
Horizon Wi-Com, LLC (Horizon)  
LightSquared  
The National Telecommunications Cooperative Association (NTCA)  
Rural Cellular Association (RCA)  
Sensus  
Snapline Communications, LLC (Snapline)  
T-Mobile  
USCC  
WCS Coalition

Petitions for Reconsideration of the *WRS Reform Order*

Atlantic Tele-Network, Inc.  
CTIA, AT&T, Cricket, Rural Cellular Association, Sprint, T-Mobile, USCC, Verizon, jointly  
Green Flag, CWC Licensing, James McCotter, NTCH-CA, jointly

2017 Supplemental Comments

CTIA  
CTN  
EWA  
NTCH, Inc. (NTCH)  
Sensus  
Verizon

2017 Supplemental Reply Comments

Competitive Carriers Association (CCA)  
HITN  
T-Mobile  
USCC

Ex Parte Letters

AT&T  
Blooston  
CCA  
CTIA  
EWA  
LMCC  
Sprint  
T-Mobile  
USCC  
Verizon

## APPENDIX E

## Discussion of Selected Prior and Current WRS Renewal Rules

1. *Part 22.* Prior to March 2017, the Part 22 Cellular Radiotelephone Service rules established a detailed, two-step comparative hearing process for addressing a timely-filed renewal application and all timely-filed mutually exclusive applications.<sup>1</sup> The rules required an administrative law judge (ALJ) to conduct a threshold hearing to determine whether a Cellular renewal applicant was entitled to a renewal expectancy.<sup>2</sup> If the ALJ determined that the applicant was entitled to a renewal expectancy and was otherwise basically qualified, the license was renewed and any competing applications were denied.<sup>3</sup> If the ALJ determined that a renewal expectancy was unwarranted, however, all mutually exclusive applications in the renewal filing group were considered in a full comparative hearing.<sup>4</sup> In March 2017, the Commission eliminated the Cellular Service comparative hearing process.<sup>5</sup>

2. *Part 24.* The Part 24 Broadband Personal Communications Service (PCS) rules contain virtually no guidance regarding comparative renewal applications, do not specify how or when competing applications are to be filed against a renewal application, do not establish two-step hearings, and do not enumerate procedures for evaluating renewal applications or what is required in a renewal expectancy exhibit.<sup>6</sup>

3. *Part 27.* The Part 27 Miscellaneous Wireless Communications Services rules, albeit more detailed than Part 24, contain few specific rules addressing the possibility of competing renewal applications, and affirmatively prohibit such filings against renewal applicants in the 700 MHz Commercial Services, AWS-4, H Block, AWS-3, and 600 MHz bands.<sup>7</sup> Part 27 provides that renewal applicants for services governed by Section 27.14(b)-(d) involved in a comparative renewal proceeding will receive a renewal expectancy if they demonstrate that they have provided substantial service and

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<sup>1</sup> See former 47 CFR §§ 22.935-22.940.

<sup>2</sup> A renewal expectancy would be awarded if the ALJ found that the renewal applicant had provided substantial service, and substantially complied with the Commission's rules, policies, and the Communications Act. See former 47 CFR §§ 22.935(c), 22.940(a). Additional issues (e.g., qualifications of the renewal applicant) also could be specified for consideration by the ALJ. See former 47 CFR § 22.935(c).

<sup>3</sup> See former 47 CFR § 22.935(c).

<sup>4</sup> See former 47 CFR § 22.935(c). The specific elements to be considered by the ALJ in comparing the competing applications were delineated in the rules. See former 47 CFR § 22.940.

<sup>5</sup> *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area; Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27, Interim Restrictions and Procedures for Cellular Service Applications; Amendment of Parts 0, 1, and 22 of the Commission's Rules with Regard to Frequency Coordination for the Cellular Service; Amendment of Part 22 of the Commission's Rules Regarding Certain Administrative and Filing Requirements; Amendment of the Commission's Rules Governing Radiated Power Limits for the Cellular Service; Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services; 2016 Biennial Review of Telecommunications Regulations*, WT Docket No. 12-40; RM No. 11510; RM No. 11660; WT Docket No. 10-112; WT Docket No. 16-138, Second Report and Order, Report and Order, and Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 2518 (2017). The deletion of the Cellular comparative renewal hearing rules became effective on May 12, 2017. Cellular Service, Including Changes in Licensing of Unserved Area, 82 Fed. Reg. 17570 (April 12, 2017).

<sup>6</sup> See 47 CFR § 24.16; see generally 47 CFR pt. 24.

<sup>7</sup> See 47 CFR §§ 27.14(e), (f).

have substantially complied with the Commission's rules and policies and the Act.<sup>8</sup> Part 27, however, does not specify what type of hearing procedures (two-step or otherwise) would apply to mutually exclusive applications in the Part 27 renewal context. Unless a competing application is filed under Section 27.14(b)-(d) of the rules, an applicant for renewal of a license under Section 27.14(b)-(d) has no affirmative renewal filing obligation codified in the rules (other than the contemporaneous filing obligation of demonstrating that it has met the 'substantial service' performance requirement in Section 27.14(a)."<sup>9</sup>

4. Since the Commission adopted the *WRS Reform NPRM* in 2010, the Commission has adopted service rules for four additional Part 27 services, AWS-4,<sup>10</sup> H Block,<sup>11</sup> AWS-3,<sup>12</sup> and 600 MHz.<sup>13</sup> For each service, the Commission adopted a renewal paradigm similar to the one proposed in the *WRS Reform NPRM*, requiring renewal applicants to "demonstrate that they have been and are continuing to provide service to the public, and are compliant with the Communications Act and with the Commission's rules and policies."<sup>14</sup> Renewal applicants in those services must file a "renewal showing" that includes "a detailed description of [the applicant's] provision of service during the entire license period."<sup>15</sup> The Commission noted that licensees would be subject to the outcome of the instant proceeding and any rule changes the Commission might adopt.<sup>16</sup>

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<sup>8</sup> See 47 CFR § 27.14(b). Section 27.14(c) of the Commission's rules, 47 CFR § 27.14(c), specifies the minimum information to be included by a "WCS renewal applicant" involved in a comparative renewal proceeding to establish a renewal expectancy, similar to the rules governing the Cellular service.

<sup>9</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review -- Amendment of Parts 1, 22, 24, 27, and 90 To Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 06-150; CC Docket No. 94-102; WT Docket No. 01-309; WT Docket No. 03-264; WT Docket No. 06-169; PS Docket No. 06-229; WT Docket No. 96-86, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8092, para. 74 (2007) (*700 MHz First Report and Order*).

<sup>10</sup> *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands; Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102 (2012) (*AWS-4 Report and Order*).

<sup>11</sup> *Service Rules for Advanced Wireless Services H Block--Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357, Report and Order, 28 FCC Rcd 9483, 9567-69, paras. 223-27 (2013) (*H Block Report and Order*).

<sup>12</sup> *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, GN Docket 13-185, Report and Order, 29 FCC Rcd 4610, 4667-69, paras. 157-62 (2014) (*AWS-3 Report and Order*).

<sup>13</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6885-87, paras. 785-90 (2014) (*600 MHz Report and Order*).

<sup>14</sup> *Id.* at 6885, para. 783.

<sup>15</sup> *Id.* at 6885-86, para. 786. The renewal showing must discuss "(1) the level and quality of service provided (including the population served, the area served, the number of subscribers, and the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to qualifying tribal land

(continued...)

5. *Part 30.* The Commission recently adopted service rules for Part 30 Upper Microwave Flexible Use Service (UMFUS), including renewal rules addressing UMFUS licensees' first license terms.<sup>17</sup> Specifically, a UMFUS licensee must file a renewal application at the end of its initial license term that demonstrates that the licensee has met its final performance requirement.<sup>18</sup> The Commission deferred to the instant proceeding regarding renewal requirements for subsequent license terms.<sup>19</sup>

6. *Part 90.* The Part 90 Commercial Mobile Radio Service (CMRS)<sup>20</sup> rules present another situation. The Commission has stated that Part 90 CMRS licensees would be afforded a renewal expectancy and that “[t]he applicable sections of Part 22 governing . . . renewal expectancy will be incorporated into Part 90.”<sup>21</sup> At present, however, only two sections in Part 90 address CMRS renewal situations.<sup>22</sup>

7. Part 90 does include specific provisions regarding the renewal of 220-222 MHz licenses, which are similar to the Part 27 rules in providing that renewal applicants must demonstrate that they have provided substantial service during the past license term and have substantially complied with applicable FCC rules and policies and the Act.<sup>23</sup> Section 90.743 further provides that, for a 220-222 MHz renewal applicant to receive a renewal expectancy, it must include a description of its current service in terms of geographic coverage and population served, an explanation of its record of expansion including a timetable for new station construction to meet changes in service demand, a description of investments, copies of any FCC orders finding that the renewal applicant has violated the Act or any FCC rule or

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as defined in section 1.2110(f)(3)(i) of the Commission's rules; and (5) any other factors associated with the level of service to the public.” *Id.*

<sup>16</sup> See, e.g., *H Block Report and Order*, 28 FCC Rcd at 9569-70, para. 226; *AWS-3 Report and Order*, 29 FCC Rcd at 4667, para. 158, n.473; *600 MHz Report and Order*, 29 FCC Rcd at 6885-86, para. 786, n.2214.

<sup>17</sup> 47 CFR § 30.104.

<sup>18</sup> See *id.* See also *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services; Establishing a More Flexible Framework to Facilitate Satellite Operations in the 27.5-28.35 GHz and 37.5-40 GHz Bands; Petition for Rulemaking of the Fixed Wireless Communications Coalition to Create Service Rules for the 42-43.5 GHz Band; Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services; Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0- 38.0 GHz and 40.0-40.5 GHz for Government Operations*, GN Docket No. 14-177; IB Docket No. 15-256; RM-11664; WT Docket No. 10-112; IB Docket No. 97-95, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8088, paras. 203-205 (*Spectrum Frontiers Report and Order*).

<sup>19</sup> *Spectrum Frontiers Report and Order*, 31 FCC Rcd at 8088, para. 205.

<sup>20</sup> Section 332(d) of the Act defines commercial mobile radio service (CMRS) as any mobile service “that is provided for profit and makes interconnected service available to (A) the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.” 47 U.S.C. § 332(d).

<sup>21</sup> *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, 8157, para. 386 (1994), citing 47 CFR § 22.940.

<sup>22</sup> Section 90.165 addresses procedures for mutually exclusive applications, and includes provisions related to defining and processing a “renewal filing group.” 47 CFR § 90.165(b)(1), (c)(3)(i), and (c)(4)(i).

<sup>23</sup> 47 CFR § 90.743(a).

policy, and a list of any pending proceedings that relate to any such violation.<sup>24</sup> This section does not, however, specify the procedures for processing competing renewal applications.

8. *Part 101.* Part 101 includes a number of renewal rules for geographically licensed services that are similar to those found in Part 27. Section 101.1011(c), for example, requires a renewal applicant involved in a comparative renewal proceeding for a local multipoint distribution service license to file detailed information to demonstrate substantial service,<sup>25</sup> but such information is not required to demonstrate substantial service as a performance requirement.<sup>26</sup> Part 101 rules addressing comparative renewal procedures include Sections 101.529 (24 GHz), 101.1011 (local multipoint distribution service), 101.1327 (multiple address systems), and 101.1413 (multichannel video distribution and data service).<sup>27</sup> For renewal applicants not involved in a comparative renewal proceeding, these rules do not specify renewal criteria separate from any performance requirement. In discussing similar rules under Part 27, the Commission has explained that unless a competing application is filed, an applicant for renewal of a license has no affirmative renewal filing obligation codified in the rules other than the contemporaneous filing obligation of demonstrating that it has met the substantial service performance requirement.<sup>28</sup>

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<sup>24</sup> 47 CFR § 90.743(b).

<sup>25</sup> 47 CFR § 101.1011(c).

<sup>26</sup> 47 CFR § 101.1011(a).

<sup>27</sup> 47 CFR §§ 101.529, 101.1011, 101.1327, and 101.1413.

<sup>28</sup> See *700 MHz First Report and Order*, 22 FCC Rcd 8064, 8092, para. 74.

## APPENDIX F

## Discussion of Current Permanent Discontinuance Requirements

1. *Part 22 Public Mobile Services.* The Commission's Part 22 rules govern operations in the Paging and Radiotelephone Service, Rural Radiotelephone Service, Air-Ground Radiotelephone Service, Cellular Radiotelephone Service, and Offshore Radiotelephone Service.<sup>1</sup> Under Part 22, "any station that has not provided *service to subscribers* for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the end of the 90 day period and provided a date on which operations will resume, which date must not be in excess of 30 additional days."<sup>2</sup> "Service to subscribers" is defined as "[s]ervice to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier."<sup>3</sup>

2. *Part 24 Personal Communications Services.* Section 1.955(a)(3) provides that an authorization will "automatically terminate, without specific Commission action, if service is permanently discontinued."<sup>4</sup> The rule also provides that "[t]he Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section."<sup>5</sup> For many of the Commission's services licensed by competitive bidding (such as PCS), the specific service rules do not define permanent discontinuance of operations.

3. *Part 27 Miscellaneous Wireless Communications Services.* The Commission's Part 27 Miscellaneous Wireless Communications Services include: (1) 700 MHz Commercial Service (Lower and Upper 700 MHz Bands);<sup>6</sup> (2) 700 MHz Guard Band Service;<sup>7</sup> (3) 1.4 GHz Service;<sup>8</sup> (4) 1.6 GHz Service;<sup>9</sup> (5) Advanced Wireless Service (AWS-1, 1710-1755 MHz, 2110-2155 MHz);<sup>10</sup> (6) Wireless Communications Service (WCS, 2305-2320 and 2345-2360 MHz),<sup>11</sup> and (7) the Broadband Radio Service and Educational Broadband Service.<sup>12</sup> Part 27 does not define permanent discontinuance for any of these services. Section 27.66(b), however, requires fixed common carriers in any of these services to obtain prior Commission authorization before voluntarily discontinuing service to a community or part of a community, which will be granted "within 31 days after filing if no objections have been received."<sup>13</sup> Fixed non-common carrier licensees, on the other hand, may voluntarily discontinue service without prior

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<sup>1</sup> 47 CFR part 22, subpts. E, F, G, H, and I.

<sup>2</sup> 47 CFR § 22.317 (emphasis added). In March 2017, the Commission adopted a revision to section 22.317 such that it would not apply to the Cellular Radiotelephone Service, and adopted new 47 CFR § 22.947 governing permanent discontinuance for Cellular licensees. *Cellular Second Report and Order*, 32 FCC Rcd at 2559-60, paras. 113-15.

<sup>3</sup> 47 CFR § 22.99.

<sup>4</sup> 47 CFR § 1.955(a)(3).

<sup>5</sup> *Id.*

<sup>6</sup> 47 CFR pt. 27, subpt. F.

<sup>7</sup> 47 CFR pt. 27, subpt. G.

<sup>8</sup> 47 CFR pt. 27, subpt. I.

<sup>9</sup> 47 CFR pt. 27, subpt. J.

<sup>10</sup> 47 CFR pt. 27, subpt. L.

<sup>11</sup> 47 CFR pt. 27, subpt. D.

<sup>12</sup> 47 CFR pt. 27, subpt. M.

<sup>13</sup> 47 CFR § 27.66(b), citing 47 CFR § 63.71.

Commission authorization and need only provide the Commission notice within seven days of such discontinuance.<sup>14</sup>

4. Part 27 Miscellaneous Wireless Communications Services also include: (1) AWS-4 (2000-2020 MHz and 2180-2200 MHz),<sup>15</sup> H Block (1915-1920 MHz and 1995-2000 MHz),<sup>16</sup> AWS-3 (1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz),<sup>17</sup> and 600 MHz Services.<sup>18</sup> For licensees in these services, the Commission adopted permanent discontinuance rules. Specifically, for licensees with common carrier regulatory status, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee in the individual license area.<sup>19</sup> For licensees with non-common carrier status, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not operate.<sup>20</sup> Further, a licensee that permanently discontinues service must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation.<sup>21</sup> However, an authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.<sup>22</sup>

5. *Broadband Radio Service and Educational Broadband Service.* As noted above, in 2004, the Commission implemented a new band plan for BRS and EBS. To enable licensees to transition to the new band plan and deploy new and innovative wireless services, the Commission eliminated its discontinuance of service rules, and adopted a substantial service standard under which all licensees were required to demonstrate substantial service on or before May 1, 2011.<sup>23</sup>

6. *Part 30 Upper Microwave Flexible Use Service.* The Commission recently adopted service rules for the Upper Microwave Flexible Use Service (UMFUS), including rules governing permanent discontinuance. For licensees with common carrier regulatory status, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee in the individual license area.<sup>24</sup> For licensees with non-common carrier status, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not operate.<sup>25</sup> Further, a licensee that permanently discontinues service must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation.<sup>26</sup> However, an authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.<sup>27</sup>

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<sup>14</sup> 47 CFR § 27.66(c).

<sup>15</sup> 47 CFR pt. 27, subpt. L.

<sup>16</sup> 47 CFR pt. 27, subpt. K.

<sup>17</sup> 47 CFR pt. 27, subpt. L.

<sup>18</sup> 47 CFR pt. 27, subpt. N.

<sup>19</sup> 47 CFR § 27.17(b).

<sup>20</sup> *Id.*

<sup>21</sup> 47 CFR § 27.17(c).

<sup>22</sup> *Id.*

<sup>23</sup> See *BRS/EBS Report and Order*, 19 FCC Rcd at 14254, para. 231.

<sup>24</sup> 47 CFR § 30.106(b).

<sup>25</sup> *Id.*

<sup>26</sup> 47 CFR § 30.106(c).

The Commission stated that the permanent discontinuance rules would be implemented one year after the initial license period ends.<sup>28</sup>

7. *Part 80 Safety and Special Radio Service.* Part 80, which governs stations in the Maritime Services, does not currently define permanent discontinuance of operations. We note that Section 80.31 provides that “[w]ireless telecommunications carriers subject to this part [80] must comply with the discontinuance of service provisions of part 63 of this chapter,”<sup>29</sup> but this rule has limited applicability.<sup>30</sup>

8. *Part 90 Private Land Mobile Radio Services.* Section 90.157(a) provides that “[a]n authorization shall cancel automatically upon permanent discontinuance of operations.”<sup>31</sup> The rule further provides that “[u]nless stated otherwise in this part or in a station authorization, for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.”<sup>32</sup> This rule applies to all Part 90 services, except trunked Specialized Mobile Radio (SMR) Service, which is discussed below.

9. *Part 90 Specialized Mobile Radio Service.* Section 90.631(f), which governs permanent discontinuance of trunked SMR Service operations, is like Section 22.317, governing permanent discontinuance of operations for all Part 22 Public Mobile Services. The rule provides that an SMR “licensee with facilities that have discontinued operations for 90 continuous days is presumed to have permanently discontinued operations,” unless it notifies the Commission “prior to the end of the 90 day period and provides a date on which operation will resume, which date must not be in excess of 30 additional days.”<sup>33</sup> Under the rule, a trunked SMR base station “is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation.”<sup>34</sup>

10. *Part 95 218-219 MHz Service.* Part 95 does not currently define permanent discontinuance of operations for licensees in the 218-219 MHz Service.<sup>35</sup>

11. *Part 101 Fixed Microwave Services.* Section 101.65(b) provides that any Part 101 “station which has not operated for one year or more is considered to have been permanently discontinued.”<sup>36</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Spectrum Frontiers Report and Order*, 31 FCC Rcd at 8093, para. 227.

<sup>29</sup> 47 CFR § 80.31.

<sup>30</sup> In 1994, the Commission determined to forbear from applying section 214 market exit requirements to CMRS providers. *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480-81, para. 182 (1994). *See also* 47 CFR § 20.15(b)(3) (CMRS providers are not required to “[s]ubmit applications for new facilities or discontinuance of existing facilities”). Section 80.31 thus only applies to Part 80 licenses to the extent they are providing international (high seas) public coast service or fixed common carrier point-to-point service.

<sup>31</sup> 47 CFR § 90.157(a).

<sup>32</sup> *Id.*

<sup>33</sup> 47 CFR § 90.631(f).

<sup>34</sup> *Id.*

<sup>35</sup> *See* 47 CFR pt. 95, subpt. F.

<sup>36</sup> 47 CFR § 101.65(b).

## APPENDIX G

## Site-based Services

The site-based safe harbor may be used by any site-based WRS licensee in the following services:<sup>1</sup>

- 220-222 MHz Service (site-based),<sup>2</sup> excluding public safety licenses;
- 800/900 MHz (SMR and Business and Industrial Land Transportation Pool);<sup>3</sup>
- Aeronautical Advisory Stations (Unicom)s;<sup>4</sup>
- Air-Ground Radiotelephone Service (General Aviation);<sup>5</sup>
- Alaska-Public Fixed Stations;<sup>6</sup>
- Broadcast Auxiliary Service;<sup>7</sup>
- Common Carrier Fixed Point-to-Point Microwave Service;<sup>8</sup>
- Industrial/Business Radio Pool;<sup>9</sup>
- Local Television Transmission Service;<sup>10</sup>
- Multiple Address Systems (site-based), excluding public safety licenses;<sup>11</sup>
- Non-Multilateration Location and Monitoring Service;<sup>12</sup>
- Offshore Radiotelephone Service;<sup>13</sup>
- Paging and Radiotelephone Service (site-based),<sup>14</sup>
- Private Carrier Paging;<sup>15</sup>

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<sup>1</sup> The Commission initially included site-based Digital Electronic Message Services (DEMS) within its site-based proposals in the *WRS Reform NPRM*, 27 FCC Rcd at 7010-11, para. 34. The Commission no longer licenses this service by site. Existing DEMS stations are now licensed as part of the 24 GHz Service on a geographic basis and we include those licenses within our rules for geographic licenses. *24 GHz Report and Order*, 15 FCC Rcd at 16946, para. 24.

<sup>2</sup> See 47 CFR pt. 90, subpt. T.

<sup>3</sup> See 47 CFR pt. 90, subpt. S.

<sup>4</sup> See 47 CFR pt. 87, subpt. G.

<sup>5</sup> See 47 CFR pt. 22, subpt. G.

<sup>6</sup> See 47 CFR pt. 80, subpt. O.

<sup>7</sup> See 47 CFR pt. 74, subpts. D, E, F, and H.

<sup>8</sup> See 47 CFR pt. 101, subpt. I.

<sup>9</sup> See 47 CFR pt. 90, subpt. C.

<sup>10</sup> See 47 CFR pt. 101, subpt. J.

<sup>11</sup> See 47 CFR pt. 101, subpt. H.

<sup>12</sup> See 47 CFR pt. 90, subpt. M.

<sup>13</sup> See 47 CFR pt. 22, subpt. I.

<sup>14</sup> See 47 CFR pt. 22, subpt. E.

<sup>15</sup> See 47 CFR pt. 90, subpt. P.

- Private Operational Fixed Point-to-Point Microwave Service, excluding public safety licenses;<sup>16</sup>
- Public Coast Stations (site-based);<sup>17</sup>
- Radiodetermination Service Stations (Radionavigation Land Stations);<sup>18</sup>
- Radiolocation Service;<sup>19</sup> and
- Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service).<sup>20</sup>

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<sup>16</sup> See 47 CFR pt. 101, subpt. H.

<sup>17</sup> See 47 CFR pt. 80, subpt. J.

<sup>18</sup> See 47 CFR pt. 87, subpt. Q.

<sup>19</sup> See 47 CFR pt. 90, subpt. F.

<sup>20</sup> See 47 CFR pt. 22, subpt. F.

**APPENDIX H****Geographic Area Services**

The geographic area safe harbors (for wireless providers using geographic licenses and private systems using geographic licenses) may be used by licensees in the following Wireless Radio Services that are licensed on a geographic-area basis:

- 1.4 GHz Service;<sup>1</sup>
- 1.6 GHz Service;<sup>2</sup>
- 24 GHz Service and Digital Electronic Message Services;<sup>3</sup>
- 218-219 MHz Service (formerly Interactive Video Data Service);<sup>4</sup>
- 220-222 MHz Service, excluding public safety licenses;<sup>5</sup>
- 600 MHz Service;<sup>6</sup>
- 700 MHz Commercial Services;<sup>7</sup>
- 700 MHz Guard Band Service;<sup>8</sup>
- 800 MHz Specialized Mobile Radio Service;<sup>9</sup>
- 900 MHz Specialized Mobile Radio Service;<sup>10</sup>
- Advanced Wireless Services;<sup>11</sup>
- Air-Ground Radiotelephone Service (Commercial Aviation);<sup>12</sup>
- Broadband Personal Communications Service;<sup>13</sup>
- Broadband Radio Service;<sup>14</sup>
- Cellular Radiotelephone Service;<sup>15</sup>

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<sup>1</sup> See 47 CFR pt. 27, subpt. I.

<sup>2</sup> See 47 CFR pt. 27, subpt. J.

<sup>3</sup> See 47 CFR pt. 101, subpt. G.

<sup>4</sup> See 47 CFR pt. 95, subpt. F.

<sup>5</sup> See 47 CFR pt. 90, subpt. T.

<sup>6</sup> See 47 CFR pt. 27, subpt. N.

<sup>7</sup> See 47 CFR pt. 27, subpts. F and H.

<sup>8</sup> See 47 CFR pt. 27, subpt. G. The 700 MHz guard bands include Block A 757-758, 787-788 MHz, and Block B 775-776, 805-806 MHz.

<sup>9</sup> See 47 CFR pt. 90, subpt. S.

<sup>10</sup> See 47 CFR pt. 90, subpt. S.

<sup>11</sup> See 47 CFR pt. 27, subpts. K and L.

<sup>12</sup> See 47 CFR pt. 22, subpt. G.

<sup>13</sup> See 47 CFR pt. 24, subpt. E.

<sup>14</sup> See 47 CFR pt. 27, subpt. M.

- Dedicated Short Range Communications Service,<sup>16</sup> excluding public safety licenses;
- H Block Service;<sup>17</sup>
- Local Multipoint Distribution Service;<sup>18</sup>
- Multichannel Video Distribution and Data Service;<sup>19</sup>
- Multilateration Location and Monitoring Service;<sup>20</sup>
- Multiple Address Systems (EAs);<sup>21</sup>
- Narrowband Personal Communications Service;<sup>22</sup>
- Paging and Radiotelephone Service;<sup>23</sup>
- VHF Public Coast Stations, including Automated Maritime Telecommunications Systems;<sup>24</sup>
- Upper Microwave Flexible Use Service;<sup>25</sup> and
- Wireless Communications Service.<sup>26</sup>

(Continued from previous page) \_\_\_\_\_

<sup>15</sup> See 47 CFR pt. 22, subpt. H.

<sup>16</sup> See 47 CFR pt. 90, subpt. M. Non-reserved Dedicated Short Range Communications Service frequencies in the 5850-5925 MHz band are licensed on the basis of non-exclusive geographic areas. Such licenses serve as a prerequisite for registering individual Roadside Units (RSUs) located within the licensed geographic area. See 47 CFR § 90.375.

<sup>17</sup> See 47 CFR pt. 27, subpt. K.

<sup>18</sup> See 47 CFR pt. 101, subpt. L.

<sup>19</sup> See 47 CFR pt. 101, subpt. P.

<sup>20</sup> See 47 CFR pt. 90, subpt. M.

<sup>21</sup> See 47 CFR pt. 101, subpt. O.

<sup>22</sup> See 47 CFR pt. 24, subpt. D.

<sup>23</sup> See 47 CFR pt. 22, subpt. E; 47 CFR pt. 90, subpt. P.

<sup>24</sup> See 47 CFR pt. 80, subpt. J.

<sup>25</sup> See 47 CFR pt. 30.

<sup>26</sup> See 47 CFR pt. 27, subpt. D.

## APPENDIX I

## Wireless Radio Services Excluded From Rulemaking

The following licenses have no construction/performance requirement. These services therefore are excluded from this rulemaking.

- 70/80/90 GHz Service (licenses in these bands are non-exclusive and do not authorize transmission unless/until each “pencil beam” link is registered in a private-sector database);<sup>424</sup>
- 76-81 GHz Band Radar Service;<sup>425</sup>
- 48
- Aeronautical Enroute Stations, Aeronautical Fixed Stations, and Aircraft Data Link Land Test Stations;<sup>426</sup>
- Aeronautical Multicom Stations;<sup>427</sup>
- Aeronautical Search and Rescue Stations;<sup>428</sup>
- Aeronautical Utility Mobile Stations;<sup>429</sup>
- Aircraft Stations;<sup>430</sup>
- Airport Control Tower Stations;<sup>431</sup>
- Alaska-Private Fixed Stations<sup>432</sup>
- Amateur Radio Service;<sup>433</sup>
- Automatic Weather Stations;<sup>434</sup>
- Aviation Support Stations;<sup>435</sup>
- Citizens Band Radio Service;<sup>436</sup>
- Commercial Radio Operator License Program;<sup>437</sup>

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<sup>424</sup> See 47 CFR pt. 101, subpt. Q.

<sup>425</sup> See 47 CFR pt. 95, subpt. M.

<sup>426</sup> See 47 CFR pt. 87, subpt. I.

<sup>427</sup> See 47 CFR pt. 87, subpt. H.

<sup>428</sup> See 47 CFR pt. 87, subpt. M.

<sup>429</sup> See 47 CFR pt. 87, subpt. L.

<sup>430</sup> See 47 CFR pt. 87, subpt. F.

<sup>431</sup> See 47 CFR pt. 87, subpt. O.

<sup>432</sup> See 47 CFR pt. 80, subpt. O.

<sup>433</sup> See 47 CFR pt. 97.

<sup>434</sup> See 47 CFR pt. 87, subpt. S.

<sup>435</sup> See 47 CFR pt. 87, subpt. K.

<sup>436</sup> See 47 CFR pt. 95, subpt. D.

<sup>437</sup> See 47 CFR pt. 13.

- Dedicated Short Range Communications Service (On-Board Units operating in the 5850-5925 MHz band);<sup>438</sup>
- Family Radio Service;<sup>439</sup>
- Flight Test Stations;<sup>440</sup>
- General Mobile Radio Service;<sup>441</sup>
- Low Power Radio Service;<sup>442</sup>
- Maritime Support Stations;<sup>443</sup>
- Medical Device Radiocommunication Service;<sup>444</sup>
- Multi-Use Radio Service;<sup>445</sup>
- Part 80 Operational Fixed Stations;<sup>446</sup>
- Part 87 Operational Fixed Stations;<sup>447</sup>
- Personal Locator Beacons and Maritime Survivor Locating Devices;<sup>448</sup>
- Private Coast Stations and Marine Utility Stations;<sup>449</sup>
- Part 80 Radiodetermination Service Stations;<sup>450</sup>
- Part 87 Radiodetermination Service Stations (Radiolocation Land Stations only);<sup>451</sup>
- Radio Control Radio Service;<sup>452</sup>
- Ship Stations;<sup>453</sup>
- Wireless Broadband Services in the 3650-3700 MHz Band (licenses in these bands are nationwide, non-exclusive, and do not authorize transmission unless and until each fixed or

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<sup>438</sup> See 47 CFR pt. 95, subpt. L (On-Board Units operating in the 5850-5925 MHz band are licensed by rule).

<sup>439</sup> See 47 CFR pt. 95, subpt. B.

<sup>440</sup> See 47 CFR pt. 87, subpt. J.

<sup>441</sup> See 47 CFR pt. 95, subpt. AAAE.

<sup>442</sup> See 47 CFR pt. 95, subpt. G.

<sup>443</sup> See 47 CFR pt. 80, subpt. N.

<sup>444</sup> See 47 CFR pt. 95, subpt. I.

<sup>445</sup> See 47 CFR pt. 95, subpt. J.

<sup>446</sup> See 47 CFR pt. 80, subpt. L.

<sup>447</sup> See 47 CFR pt. 87, subpt. P.

<sup>448</sup> See 47 CFR pt. 95, subpt. K.

<sup>449</sup> See 47 CFR pt. 80, subpt. K.

<sup>450</sup> See 47 CFR pt. 80, subpt. M.

<sup>451</sup> See 47 CFR pt. 95.587, subpt. KKQ.

<sup>452</sup> See 47 CFR pt. 95, subpt. C.

<sup>453</sup> See 47 CFR pt. 80, subpts. R-X.

base station is registered; an unlimited number of base and fixed stations may be registered (not licensed) in this band on a nationwide, non-exclusive basis),<sup>454</sup> and

- Wireless Medical Telemetry Service.<sup>455</sup>

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<sup>454</sup> See 47 CFR pt. 90, subpt. Z.

<sup>455</sup> See 47 CFR pt. 95, subpt. H.

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112.

Baseball has been with us for over a century. And fans regard its rules as sacrosanct. But for the early years of its existence, during the 1800s, major rule changes occurred regularly, and it was common for different leagues to play by different rules. For instance, in 1886, the National League required seven balls for a walk, while the American Association required only six (the current four-ball rule was codified in 1889). However, since the American League was formed in 1901, the rules have been consistent across both leagues—except for the pesky Designated Hitter rule, which they can't seem to agree on. Needless to say, baseball's been a huge success ever since.

This *Report and Order* has a similar aim of consistency. Today, the FCC has a patchwork for handling the renewal of Wireless Radio Service spectrum licenses. Some renewal rules are service-specific. There are different provisions on comparative renewals and continuity of service. We also have partitioning and disaggregation performance rules. This patchwork isn't optimal, to say the least.

We want to change all that by standardizing the framework. We'll have a single step-by-step process that will be applied across the board. This simplified process will reduce regulatory burdens so resources can go towards investment in wireless networks and spurring innovation in all parts of America.

This item takes another step that, in my view, hits it out of the park. Too often, licensed spectrum isn't being used to benefit Americans who live in rural areas. That's why I'm pleased that today's *Further Notice of Proposed Rulemaking* asks questions on how the FCC could promote greater buildout in these areas. We want this public resource, once licensed, to benefit as many Americans as possible—including those in hard-to-reach places. That's an important component of closing the urban-rural divide when it comes to connectivity.

My thanks to the FCC staff for their work on this item. In particular, thanks to John Barry, Steve Buenzow, Lloyd Coward, Peter Daronco, Tom Derenge, Anna Gentry, Jessica Greffenius, Kathy Harris, Joyce Jones, Roger Noel, Tom Reed, Mike Regiec, John Schauble, Jim Schlichting, Blaise Scinto, Scot Stone, Nina Shafran, Cecilia Sulhoff, Alex Vetras, and Mary Claire York from the Wireless Telecommunications Bureau; Tracy Simmons and Michael Wilhelm from the Public Safety and Homeland Security Bureau; Jason Koslofsky, Jeremy Marcus, and Aspa Paroutsas from the Enforcement Bureau; Chana Wilkerson from the Office of Communications Business Opportunities; and David Horowitz and Doug Klein from the Office of General Counsel.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112

According to the Commission's licensing records, more than 675,000 renewal applications are expected to be filed by geographic and site-based licensees over the next decade. At a time when both the Commission's budget and staff appear to be shrinking, it behooves us to have a streamlined and efficient process in place to review forthcoming applications. Such a process will not only promote efficient use of our scarce spectrum resources, but will also provide licensees certainty when it comes to their license renewal requirements.

In the item before us today, we replace a patchwork of service-specific rules with a uniform renewal standard for most Wireless Radio Services licensees. Notably, we adopt a set of safe harbors that will reduce licensee filing burdens and focus Commission resources on reviewing applications that merit a closer look. We also make clear that if a licensee cannot meet the renewal standard and its license cannot be renewed, its licensed spectrum will be automatically returned to the Commission.

At the heart of this proceeding, is the Commission's duty to ensure that the nation's valuable spectrum resources are being responsibly and robustly deployed to meet the growing needs of consumers and businesses. As we challenge ourselves, our federal partners, and industry stakeholders to free up additional spectrum to meet our evolving wireless needs, we must be resolute and vigilant in ensuring that already deployed spectrum is being put to its highest and best use.

In the *Further Notice*, we recognize the growing digital and opportunities divide in this country, and seek comment on actions that can be taken to promote deployment of wireless services in rural areas. These connectivity challenges were ones I experienced first-hand last month during my visit to Marietta, Ohio. And it is with that experience in mind that I asked for the inclusion of questions relating to affordability and adoption of broadband services in rural America. I am grateful to my colleagues for agreeing to this request, which includes seeking comment on whether the Commission should incorporate into the renewal process reporting requirements relating to affordability of services as well as steps licensees have taken to address adoption deficiencies. I look forward to reviewing the record that develops and remain committed to exploring all avenues to closing this divide.

I would like to thank the staff of the Wireless Telecommunications Bureau for your sustained efforts to ensure that our license renewal process is harmonized and promotes efficient use of scarce spectrum resources.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, WT Docket No. 10-112*

I do not undertake changing the terms or requirements for existing licenses lightly. Commission licensees rely on our rules to formulate auction strategies and in making business decisions regarding capital-intensive network builds. The stability of our successful auction policies and licensing paradigm, including renewal expectancy and buildout requirements, have allowed our wireless providers – big and small – the needed certainty to invest, construct, innovate, upgrade and expand their offerings, and generally focus on providing the best service to their consumers. In fact, I have argued as much with many of our international colleagues who occasionally seek to reactivate licenses, modify buildout policies or change course to meet conflicting policy goals. Such actions are usually at cross purposes to producing the environment needed to actually get networks built.

Occasionally, however, there is a need to modify flawed or outdated rules. This is one of those times. I can support today's order because not only does it harmonize rules for spectrum bands offering similar services, but, more importantly, it provides certainty that did not exist under our previous rules. For instance, comparative hearings will finally and officially be a thing of the past, and there will no longer be a debate about what exactly does the Commission mean by "substantial service." Instead, these are replaced with safe harbors. Generally, an entity that operates consistent with its last buildout requirement, and can certify compliance with certain other rules, will be renewed.

If, for some reason, an entity can't make such a certification, they can submit a detailed showing supporting renewal. While I am not a fan of the case-by-case determinations that the in-depth renewal showing entails, most entities should be covered by the safe harbor. In fact, over the last two weeks, a few concerns were raised by industry participants that the safe harbor was written in such a way that entities would be unable to use it. The item we vote today incorporates edits that should resolve these, and other, issues. Hopefully, we struck the right balance.

Regarding the further notice, I agree with the underlying goals it is trying to achieve. I have been a staunch supporter of strictly enforcing our buildout requirements and reconsidering our construction benchmarks going forward. Therefore, I am supportive of seeking comment on strengthening construction requirements for new licenses or providing current licensees with voluntary options, such as increasing their coverage areas in exchange for longer license terms. These ideas are now teed up in the notice, and I thank the Chairman for accepting my suggested edits. For this reason, I can vote to approve the further notice.

However, I do want to raise serious concerns about possibly increasing the buildout requirements for existing licenses, which I am unlikely to support such efforts if they move forward. Licensees made decisions based on the rules at the time and bid accordingly. To consider altering these requirements for licensees is beyond bad faith. We certainly wouldn't have generated the auction bids or revenues we did had participants been on notice, in advance of the auction, that we can alter the terms and conditions, and we risk our sound auction policy, not to mention years of litigation, in the process.

Moreover, I also must ask how this fits in with our universal service fund efforts, such as Mobility Fund. Basically, are we forcing licensees to absorb the costs of serving additional areas that we previously have found in need of subsidization. Further, are we going to fund buildout and operations in areas where we are going to require licensees to serve? Are we going to force companies receiving subsidies to absorb the costs of expanding service to adjacent or additional areas where there is little

business case for doing so? These and other questions need to be answered before ever going down this route.

Furthermore, I am concerned about the precedent we are setting. If we can change licensees' buildout requirements, what other modifications can be made to meet the various policy goals of the day. Can a future Commission randomly add behavioral conditions like we do in the merger context, can we force sharing or leasing, or can we decide that a current licensee just holds too much spectrum in a market and force them to divest or take it back? Now I know this isn't the intention of my colleagues, but this slope seems to be mighty slippery and that is a risk I will just not be willing to take.